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Volume No. XXIX.

THE SMṚTICHANDRIKA  
VYAVAHĀRA KANḌĀ—PART I

( From the 'Nature of Vyavahāra' to 'Property of Children &c' )

( Forty Three Topics )

AN ENGLISH TRANSLATION WITH NOTES &c.

BY

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## NOTE

The Author of the *Smṛtichandrikā* divided the treatise in three groups or *Kāṇḍas* viz, the *Āchāra* including the *Ānūka*, the *Vyavahāra*, and the *S'rāddha*. The first of these viz, the *Āchāra* has been translated and issued as Vol XXVIII of this series.

The Author has split up the *Vyavahāra* into two parts or *Parichhedas*. The present volume contains the translation of the First Part which deals with the Procedural side of the *Vyavahāra* and the General Rules.

The second part gives the provisions regarding substantive rights commencing with the 'Law of Debts' and ending with the law of 'Gambling and Betting on Animals', and the 'Miscellaneous Chapter'—*Prakṛnaka*. The next two volumes will contain the translation of the remaining portion of the Second Part, and also a Preface for the entire work.

The Third Book which deals with the *S'rāddhas* will not be translated in English, but a Marāṭhi or Hindi translation may be issued as circumstances may permit.

Law College, Poona }  
26th January 1948 }

J R GHARPURE.

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# SMRTI-CHANDRIKÂ

COMPOSED BY

DEVANNA BHATTA

Book II—Vyavahâra-Kândam

Bow to the prosperous Ganesa Bow to the prosperous Sarasvatî  
Bow to the revered Guṇas

Here, in the Vyavahârakânda, First section—Parichchhedah

To the Lord of Sarasvatî, I offer salutation, to the Lord of the Goddess of wealth to the Lord of Umâ, to the Lord of the luminaries, to the Lord of the Ganas, to the sages headed by Brhaspati At each step committing errors in spite of the existence of Prâdipa and the like for the use of the sight of the seers, this Moonlight<sup>1</sup> is being expounded

Now the Vyavahârakânda is begun

There, first the nature of a Vyavahâra is being discussed There 1  
Brhaspati 'Men conducting entirely according to (the dictates of)  
Dharma in the past were free from (the guilt of doing) him, for  
those overpowered by (the passions of) covetousness and hatred, has been  
declared a legal proceeding The meaning of this has been expounded  
by Narada<sup>2</sup> When men entirely conducted themselves according 1  
to (the dictates of) Dharma and were truthful, at that time there  
was no proceeding at law, no hatred nor even jealousy It is when the  
Dharma vanishes from among men that a legal proceeding has been  
declared The meaning is that among men a proceeding relating to the  
payment of debts and the like has been declared to be (a proceeding) at 20  
law To that effect also Kâtyâyana<sup>3</sup> 'A judicial proceeding administering

1 प्रद्वि—चद्रिका Here there is a play upon the two words समप्रदीप and सृष्टिचद्रिका  
The author says although there are lights, and even flashlights (प्रदीप) on this subject  
still something was felt to be wanting and therefore the moonlight (चद्रिका)

2 Intr Verse I 2

3 This definition of Kâtyâyana centres the idea of Vyavahâra in a proceeding  
at law For a detailed analysis of this term Vyavahâra see Note 1 on p 632  
Coll Vol II where its literal meaning and several aspects have been set out  
अपराध brings this out in his comment on his text of कर्मद्वयं तस्य

धर्ममार्गानि धर्मद्वयं वायविसंज्ञा वायव्यद्वयः तस्मिन्निच्छिन्ने प्रविवादिना विलपिते तन्त्र  
लिखितसाक्षाद्विपणनीयं वास्वरूपप्रयत्नसाध्ये सन्नि यो चादिनोत्ताद स व्यवहार इति ।



- law, wherein upon an infringement, the point is established with effort, and thus which has the establishment of the point at issue as its basis, is called Vyavahāra" This is the meaning The thing called Dharma which is accomplished by truth telling non violence constancy and the like efforts, and which when infringed by causes such as avarice richness and the like, where e g in (a case of) recovery of a debt, for the purpose of securing one's money, as also in cases of a contract and the like, with a view to avoid other Dharmas where the administration of law is made, there the dispute among men which has for its basis the point to be established, is called Vyavahāra" Hence also Hārta Wherein one's property is obtained and similarly another's Dharma is avoided according to law, that is called Vyavahāra The meaning is, the dispute where (the right to) property is denied, and in the case of heretics etc, disputes regarding the infringement of one's own Dharma, also is Vyavahāra It must not be supposed that a trial like that of theft, violence etc, would not be a Vyavahāra since says Yājñavalkya<sup>1</sup> "If one injured by others in a way which is a violation of the (laws of) Smritis and usage, informs the king, that indeed becomes a (fit) subject for a judicial proceeding" Katyāyana also "If a teacher strike in anger a pupil without the birch and extreme pain is caused a complaint may lie by the father on behalf of the pupil" Brhaspati also "When the master pays wages to the workmen employed for doing a work, and if the workmen do not perform, there a dispute starts Or, where any one does violence, or does not profer a thing which has to be given, these two indeed, are occasions for a dispute, of the two the details are manifold" Uśanā also
- PAGE 2
- "Having in mind a certain object, when one lays an information before the king that has been declared as the cause for a trial of the eighteen kinds of disputes" Thus the meaning in substance of the texts of Yājñavalkya and others should be understood to be, that a dispute in regard to any one of the eighteen varieties of topics is a judicial proceeding (Vyavahāra) Hence also Nārada<sup>2</sup> 1. Recovery of debts Bailments, a Joint undertaking, Resumption of what was given Non service after acceptance of duties, Non-performance of work for wages similarly also Sale without ownership, Non delivery after sale, Rescission after purchase, Non performance of a contract a Dispute Relating to land likewise, Relation between Men and women, Share of a Heritage, Heinous offences Abuse Assault has similarly been

stated, Gambling and the Miscellaneous, thus has been stated to be of eighteen parts" The meaning is that a proceeding which has for its subject the Recovery of Debt or any of the eighteen topics is a judicial proceeding (*Vyavahāra*) Nor should it be said that by reason of the other topics such as a Deposit and the like having been stated the expression eighteen would be contradicted, since the same Author<sup>1</sup> says "The further divisions of these also amount to a hundred and eight, by reason of the multifariousness of human transactions it is declared to have a hundred varieties" *Kātyāyana* also "By reason of the eighteen titles with different characteristics (these) are of eight thousand" "With different characteristics" i.e. having different objectives to be established By this is stated in substance that judicial proceedings also are of eight thousand different varieties The two expressions 'One hundred and eight' 'Eight thousand,' are intended merely to demonstrate the numerousness, and thus there is no contradiction

Thus in the *Smṛtichandrikā*, the consideration of the Characteristics of *Vyavahāra*

### Now the Description of the Eighteen Titles—*Ashtadasapada Nirūpanam*

#### These the Characteristics of Recovery of Debts

The varieties, moreover, some have been pointed by *Narada*<sup>2</sup> "Which debt must be paid and which may not be paid, by whom, where, and in what way to be paid, and the rules of advancing and of recovering (loans) are said to make up the (title) Recovery of Debts For purposes other than gambling and such other censured purposes, the debts incurred by the father or the like must be paid For the maintenance of the family or for a similar necessary purpose a debt incurred by the father or the like must be paid By the sons, son's sons and the like (who are) under an obligation, after the period of minority, by the process of doubling &c., should be paid all that Likewise, acceptance of a pledge and the like, procedure for the advance of money, as also the process of the recovery of the debts such as by stages, a title of law in which these are stated, that title is called 'The Recovery of Debts', this is the meaning

Of the second<sup>3</sup> title also, the Same Author<sup>4</sup> states the characteristics and the kinds "Where a man entrusts any property of his own to another

in confidence and without <sup>1</sup> suspicion, it is called by the learned a deposit—a (distinct) title of law. That, where while being under a seal property is deposited without being counted or known, should be known as an *Upandhi*, whereas it is known as *Nikshepa* when (it is) counted'. The  
 5 meaning is that the difference between the *Nikshepa* and the *Upandhi* is connected with their being counted and not counted.

Of the expression 'Not Known' the meaning has been expounded by Brhspati. "That which has not been described, is covered, is not measured, is not exhibited, and which is marked by a seal and has been  
 10 made over, (that) has been declared as *Upandhika* (of an *Upandhi*)".

'Has been made over i.e. into another's hand. So also Yajñavalkya<sup>2</sup> "Property which being placed in a box is delivered into the hands of another without

being described, is called an *Upandhi*—a deposit it should be returned in the same condition". 'Box' i.e. some pot for holding the deposit, such as casket or the like. Hence also Narada<sup>3</sup> "Where money covered in another object, and which without being laid open is placed in another's house, that bailment is declared as an *Upandhi*. Where it is deposited not characterised as above, that is called a deposit, so says Brhspati.  
 20 "Where out of fear of the king or the robbers, and also by way of a fraud against the *dāyidās*, money is deposited at another's house that is declared a *Nyāsa* deposit'.

*Kātyāyana*<sup>4</sup> however, mentions an exception to this. Money made over for purchases, or deposited by one in a journey, or as a charge or an  
 25 *Aniṭita*<sup>5</sup> or *Yāchita*<sup>6</sup>, or money advanced as a money lender, has been declared to be an *Upandhi*. 'Purchase', i.e. as a means for making a purchase. 'Deposited by one in a journey', here the expression 'one in a journey', is indicative, by implication of 'one about to set out on a journey', 'a charge', i.e. a pledge, *Aniṭitam*, made over for giving to another,  
 30 *Yāchitam*, another's property such as ornaments etc. brought over, 'advanced as a money lender' i.e. made over to another for agricultural operations or the like.

1 अविशक्ति

2 Ch II 63

3 Ch II 5

4 See also Yajñavalkya II 67 (2) p 870-71

5 अन्नादिन—i.e. a deposit made by the bailee to another to be handed over to the original depositor (See *Mātāhari* p 810 ll 27-30)

6 याचिन—Clothes ornaments &c borrowed on the occasion of a marriage or the like festivities and agreed to be returned. Of *Commodatum* of the Roman Law

The Deposit thus described with its kinds is again of two varieties so says Narada<sup>1</sup> 'That, moreover, has been declared to be of two varieties, having witnesses and another likewise, the return of this is in a similar manner, there shall be proof in case of a dispute' 'Proof : e by ordeal

5

Similarly the Third title also the characteristics and varieties also have been pointed out by the Same Author<sup>2</sup> 'Where tradesmen or the like others combine together and enter upon a transaction that is known as a trading by partnership—a title of law' Tradesmen (in) a mercantile transaction officiating priests, (at) a sacrifice agriculturists, (for) cultivation, gold smiths and the like, (in) a work of art, dancers etc. (for) dancing or the like thieves etc (for) thieving or the like where (these) combine together and carry on that trade etc, being carried on by a combination—by reason of its derivation viz that with which after combining together, they start up : e work together—it is the title of law called the trading by partnership this is the meaning By the expression 'Tradesmen on the like, itself, its varieties have been indicated

10

15

Likewise of the Fourth title also the characteristics and kinds have been indicated by the Same Author<sup>3</sup> Where one wishes to take back a thing which he has not properly bestowed it is called a Resumption of gifts a title of law A transfer in which money which has (already) been paid is to be taken back on account of the thing having been returned owing to a fault of the artisan—a transaction in which occurs the non delivery of a thing given—by this derivation it is Non delivery of what is given—a title of law—thus is its literal meaning Also without any fault of the artisan or the like where there is non resumption : e non rescision of a given thing—by this derivation non rescision of what is given—thus is its sense significance

20

25

Having thus stated its twofold division according to the literal and real meanings the Author<sup>4</sup> states its four-fold division by regard to things which may be given and may not be given, as also by regard to their being the objects or the agents of the act 'What may be given, and what may not be given valid gifts and invalid gifts, thus the law of gifts is declared (to be) fourfold in judicial affairs What may be given', the thing which can bring about the completion of an unprohibited

35

donation, its opposite is what may not be given 'A valid gift', i.e. when a gift has been validly made, which cannot be taken away, while 'an invalid gift' is that which can be taken away. The meaning is that thus by these four (varieties of) things which may be given and which may not be given and valid and invalid gifts, the mode of gifts, i.e. the process of gifts should be known to be of four kinds in judicial proceedings.

PAGE 1\*

Similarly, of the Next title also the characteristics and kinds have been stated. 'If one who has undertaken service, does not render it it is called a Breach of contract of service, a title of law.' The meaning is, that the act of undertaking to perform the commands of the preceptor etc., by a pupil or the like who is desirous of rendering service, and its non performance, is the title of law known as Non performance of service after undertaking it. By the use of the common term 'he,' the five fold variety of this title is evident as it is in connection with the five kinds of servants viz a pupil, an apprentice, a servant paid by wages, a worker under a contract, and a slave, and so a separate classification has not been pointed out by him. By Brhaspati, however, a multifarious classification has been pointed out "Of many varieties has been declared, and according to the difference of caste, duties acquisition of knowledge and the payment for the work, of four kinds, in each of these the difference in proof has been declared." The Vedic knowledge is the cause for a pupil to do service, artistic knowledge for an apprentice, and work and wages for a hired servant.

Of the Next title, the characteristics and kinds have been stated by Narada. "A series of rules stated in regard to the payment and non payment of wages of paid servants that is called Non payment of wages, a title of law." 'Of paid servants,' i.e. of those doing work for wages, 'of remuneration' i.e. of the wages, series of rules regarding payment and non payment i.e. for such a one should be paid, for such a one should not be paid, even if paid and to be taken back from a particular kind, at times a double to be taken back a title of law in which such and the like rules have been stated, that by reason of its derivation, viz, of wages i.e. of the remuneration, non payment (i.e. non-discharge or not performing in accordance with the agreement) is the Non payment of wages, this is the meaning. By this also by reason of a variety of points such as what should be given and the like this title has been stated to be of a multifarious character.

In the same way he<sup>1</sup> states about the Next title "When a thing kept as a deposit, or the property of a stranger lost (by him), and found (by another), or stolen articles are sold behind his back—it should be known as a Sale by other than the owner" "Behind the back" i.e. of the owner. So also Vyāsa "When a thing which was borrowed (as a *Commodation*), a deposit received for being made over to the original depositor, a thing accepted as a deposit or property which has been stolen from another, is sold in the absence of the owner—that should be known as a Sale without ownership" 'In the absence of the owner,' i.e. when the owner is not near at hand

In this manner should be observed the characteristics and divisions of the Next title also. To that effect Narada<sup>2</sup> "Where a commodity has been sold for a price and is not delivered to the purchaser, it is called Non-delivery of a sold article, a title of law." Of this, moreover, are (different) kinds by regard to the commodity for sale, so the Author<sup>3</sup> states the divisions "In this world property is of two kinds, immovable and movable likewise in the rules regarding sale and purchase, all that is called a vendible property. The rule regarding delivery and non-delivery of that, however, has been declared to be of six varieties by the learned (thus) - (what is sold) by tale, by weight, by measure, according to work according to its beauty, and according to its splendour. 'By tale,' such as the betel nut or the like, 'by weight,' such as *raafutida* or the like, 'by measure,' such as by *Kudata* etc. rice and the like, 'according to work,' i.e. by carrying milking etc. the horse, a buffalo or the like 'according to beauty,' such as a prostitute etc. 'according to splendour,' i.e. lustre such as a jewel etc.

Thereafter the Author<sup>4</sup> states the characteristics of the Next title 'Where a purchaser after having purchased an article for a price, does not much approve of it, that is termed Rescission of Purchase,' a title of law. 'Does not much approve' i.e. does not much like it after deliberation

Likewise the Author<sup>5</sup> states the exposition of the Next title. The (general) rules settled among *Pikhandis Naigamas* and like others are called a compact (*Samaya*), Non transgression of such a compact, that is declared a title of law. *Pikhandis*, such as the *K'hapanakas*, the *Naigamas* caravans

1 Ch. VII 1

2 Ch. VIII 1

3 Ch. VIII 2-3

4 Ch. IX 1

5 Ch. X 1

or traders By the use of the word *Âdi*, 'and the like others,' are included, the associations of Brahmins learned in the three lores, corporations, trade guilds, peoples' associations, of villagers, towns etc, of these the position is to be determined from their settled rules : *e* compact, of that the non observation--: *e* non transgression that is the non transgression of a compact The non-performance of that by the inverse (method of) characterisation, like the meaning of the word *Darsa* (दर्श), the non transgression of a compact--a title of law, this is the meaning. Breach of contract is the other name of this title, is well known, and so has not been stated

The Next title also he<sup>1</sup> expounds 'Where the determination of the boundary of a water embankment or a mound disturbed by being broken into or unbroken is made and the rights over fields are in dispute, that title is called the Land dispute' Water embankment, : *e* a dam for a waterflow, 'a mound,' a region determined by petty embankments, or a field merely Boundary, : *e* the terminal point of a field etc 'Broken into : *e* broken through by a furrow or the like 'Unbroken,' : *e* the entire place, a dispute in which the determination of the titles of these in regard to the fields takes place that dispute is a Land dispute, this is the meaning That moreover, is of six varieties, so says *Kātyāyana* "Excess or deficiency as to a part, existence or absolute non existence (of the right itself), possession without previous possession (by any other), and a boundary, are the six causes that lead to a dispute regarding land The meaning of this is being stated by a detailed discussion In regard to a certain portion of land admitted (by all parties) where the dispute is whether there is more land than that or not, that is (a dispute) in regard to excess, for an assertion that a particular land is not yours the answer that so much land is mine, is in regard to less', where to an assertion that 'in this land there is a portion of mine the reply is 'no' it is (a dispute) 'in regard to the existence', where, to an assertion 'here you have no share,' the reply is 'yes, there is,' it is (a dispute) in regard to non existence where, to an assertion 'my land is in your possession when it was never before in your possession,' the answer is 'there was certainly my possession before the possession of any other' it is a dispute in regard to 'possession without previous possession,' where, to an assertion, 'this boundary is of my land,' the reply is, 'no, it is a dispute originating in a boundary

That, moreover, is of as many kinds as there are of a boundary. That classification states Nārada<sup>1</sup> "One having a flag mark, one marked by the fish, one known by a deposit, one which is undisputed, and one created by the king's command, thus a boundary is known to be of five kinds" 'Having a flag mark,' i.e. marked by a tree or the like, 'by the fish,' i.e. by water, 'known by a deposit,' i.e. containing hush etc., deposited after digging, 'One which is undisputed' i.e. which was created by the mutual agreement of the two disputants, 'created by the king's command,' i.e. made under the king's desire. 5

Now by the Same Author<sup>2</sup> has been briefly made the discussion of the two Next following titles. "That title of law in which the legal rules for women and men also regarding marriage and such other relations are stated, is called 'the Mutual relations of women and men'" 'Where<sup>3</sup> a partition of paternal estate and the like is instituted by the sons, it is called by the learned, partition of *Dīya*, a title of law' In both, by the use of the word *idh* 'and the like others, itself, their multifarious variety has been indicated, 'by the sons' is indicative by implication of the *dīyīdas* 10

Of the three titles next following, however, a discussion has been made only briefly<sup>4</sup> 'Whatever is done by force by persons inflamed with (the pride of) strength is called a *Sāhasa* *sahah* means force in this world' Whatever, i.e. taking away by force common property, or the like act To that effect Yājñavalkya<sup>5</sup> 20

PAGE 6\* "When common property is forcibly carried away that is called *Sahasa* The use of the expression (deprivation of) 'common property', is indicative by implication of man-slaughter and the like also Hence also Brhaspati<sup>6</sup> 'Man-slaughter, theft, assault on another's wife and both species of assaults, thus, *Sāhasa* has been declared to be of five kinds Thus is the multifariousness of this title which is stated by the expression Whatever in the defining verse Nārada<sup>7</sup> again states three varieties 'That again is declared to be threefold in the *Saustras*--viz (Sāhasa of) the first, middlemost, and the highest degree, its definition has been stated separately" The definition also has been elaborated by the Same Author<sup>8</sup> "Destroying, reviling, 25

1 Also cited in the *Mitaksara* as of Nārada, but not found in that *Smṛti* See p 1149 note

2 Ch XII 1

3 Ch XIII 1

4 Ch XIV 1

5 Ch II 230 p 127b

6 Cited *Vyavahara Mayukha*

7 Ch XIV 3

8 Ch XIV 4-6



- injuring or otherwise (injuring) fruits, roots water and the like, or agricultural utensils, is declared to be a *Sihasa* of the first degree (Injuring) in the same way clothes, cattle, food, drink, or household utensils is declared to be a *Sihasa* of the middle most degree Killing by means of poison, weapons, or the like, indecent assault on another man's wife and whatever other (offences) encompassing life (may be imagined) is called a *Sihasa* of the higher degree 'killing' *Vyāpādana* i.e. of various (various) difficulties (*apādān*), by means of poison and the like, *apādān* the meaning, is *Vyāpādānam* <sup>1</sup>
- Likewise, the nature of Abuse is stated <sup>2</sup> "Abusive language couched in offensive and violent terms regarding the native country, caste, family and so forth (of a man) are termed Abuse' That language which insinuates an accusation against one's country &c and which in its implication is likely to cause intense pain, that is (called) Abuse'. That even is of three kinds so says he <sup>3</sup> 'That again is declared to be of three varieties according as it is (*Niṣṭhura*) cruel, (*Aśla*) indecent or (*Tura*) sharp" He <sup>4</sup> states the characteristics of *Niṣṭhura* and of other kinds 'Abuse combined with reproaches should be regarded as *Niṣṭhura* (cruel), couched in insulting language is *Aśla* (indecent), the learned call an abuse *Tura* (sharp) by which a man is charged with an offence causing expulsion from caste", e.g. 'Thou upon thou fool, villain' and the like harsh reproaches insulting, by a sign in regard to a sister 'causing degradation such as you are a wine drinker' or the like So also *Kātyāyana* "When one attacks another with (words indicative of) the organs, are marked as bad, either of facts which have or have not occurred, that language has been declared by the wise as *Niṣṭhura* Referring in speech in contemptible terms through anger to the usage of the country as well as of families, that has been stated by wise men as (*Aśla*) indecent The speech which connects one with a *Malapikāla* as well as that which causes temper or hatred, or which involves a degradation from caste, that speech however, has been known as (*Tura*) sharp'
- Bīhāspah*, however, here also states a threefold division into first, middling, and the last like, as in the case of *Sahasas* Using violent language in regard to another's country, town family or the like, and

<sup>1</sup> वयापदन—simply means killing destruction *ruina* The Author however, gives the result of that all viz the incurring of various difficulties (वि + अपादन)

<sup>2</sup> Varada Ch XV 1

<sup>3</sup> अक्ष + अपाद—Lat Roughness of language—Abuse

<sup>4</sup> Ch XV 2

<sup>5</sup> Ch XV 3

connecting the same with a sin without reference to any thing, that is spoken of as the first (kind of) Abuse. Declaring a secondary<sup>1</sup> offence in connection with a sister, or mother, is declared as the middling (kind of) Abuse by those knowing the Sisters. A statement in regard to an uneatable or an undrinkable thing charging one with a *Mahāpataka*<sup>2</sup>, is called the highest kind of Abuse, piercing severely at a vital part<sup>3</sup>. 'Without any thing': i.e. without any particular thing. *Katyāyana* however, states other kinds of Abuse also. 'Uttering the sound<sup>4</sup> of *hum*, or a coughing sound, and also whatever is censured among the people, mimicry in act or speech, that is declared as Abuse'

Vyāsa, however, states the characteristics of Assault<sup>4</sup>. 'Attacking with ashes or the like, and also beating with a hand or the like, and encircling with an upper cloth or the like is declared (to constitute) Assault'

Brhaspati also 'Attacking with the hand, food, stone, or stick, or with ashes, mud, or sand, and also with weapons is declared (to constitute) Assault', on the limbs of another is the supplement. To that effect also *Narada*<sup>5</sup>. 'Injury to the limbs of another with a hand, foot, weapon or otherwise or defiling him with ashes or the like is termed Assault'. 'To the limbs of another': i.e. movable or immovable images.

*Danda-Pāruṣhyam* harshness. This title also has three varieties, so says the *Sam.* Author<sup>6</sup>. Of that also three varieties have been noted, as it may be small, middling, or extreme, according as it consists in the raising (of a hand or weapon) or in an unexpected attack or causing a wound, by regard to its effect on articles of small, middling or superior value<sup>7</sup>. The meaning is that by a comparative appreciation of the motives behind the action of the perpetrator, as also by a relative value of the particular thing the object of the attack, the threefold variety is determined as of the first, middling, or extreme kind.

It may be said indeed the two kinds of *Pāruṣhya*<sup>8</sup> being particular varieties of *Sitha*, their statement under different titles is improper. True, what is done by force (*Sitha*), being the peculiar characteristic of *Sitha*, what more

1 For अत्रात्र—See *Yājñavalkya* III 234-241. *Manu* Ch. VI 39-66. Coll. pages 1701-1711.

2 For महापातक—See *Yājñavalkya* III 227-233. *Manu* VI 34. Collection. Pages 1683-1700.

3 हंस्—*Hum*—is a sneering sound or a sound conveying ridicule.

4 हंसत्य—roughness by an attack. Ch. XV 4. C. C. VI 3.

over is done under deceit, is certainly the subject of a different title, as the element of a *Sāhasa* is absent. So, moreover, has been stated by the Same Author.<sup>1</sup> "Here, theft is a variety of it the particular difference, however, is stated there. *Sāhasa* is a wrong (by reason) of an attack, while the offence of theft is by (reason of) deceit. 'Wrong,' i.e. injury. That is *Sāhasa* when the deprivation of property is by force, while when the deprivation of property is done by (resort to) deceit, it is theft, this is the meaning.

Indeed, by this, the varieties of theft have been stated, and not of force or harshness. True. When the varieties

of that which has not been separately mentioned, have been stated the varieties of that which has been separately mentioned happen much more to

be noticed, and thus of the theft only have been stated, thus there is no contradiction. Therefore, the statement under a different title is also pro-

per only. Hence also the *Sangrahakāra*. "Man-slaughter and the like offences if perpetrated with violence, are called *Sāhasas* otherwise again under their appropriate titles. Otherwise again i.e. if perpetrated without force, then 'under their appropriate titles,' i.e. under the titles of Theft, Adultery with women, Abuse, Assault, this is the meaning.

Indeed, then in this manner Theft and Adultery with women should also be marked out (separately) from *Sāhasas*—True, hence also in the text 'Theft and Adultery with women also' have been intended as separate by Manu.<sup>2</sup> By Nārada however by reason of the fact that these

two are generally caused by deceit, and the difference of title is clear, the inclusion of *Sāhasa* has generally been made in the objective stage. In regard to the two kinds of (harshness) *Pitruhyas* however, these being generally committed by (the use of) force the difference of a title is not clear, and so a separate mention has been made, thus everything is unobjectionable.

After having stated that theft is different from *Sāhasa*, its threefold division also has been stated by Nārada.<sup>3</sup> "That also

has been stated by the wise to be of three varieties by regard to the thing according as the thing stolen is of inferior, of middling or of superior value. Of inferior value and the other articles also have been indicated by him too. 'Partenware, a seat, a couch, bone, wool, leather, grass, and the like leguminous gram, and

1 Not found in the published edition of the Nārada Smṛiti

2 Ch VIII 6

3 Ch XIV 13-17

pared food, these are instances of articles of small value. Clothes other than those made of silk and likewise cattle other than cows, and metals other than gold, are articles of middling value, as also are rice and barley. Gold, jewels, a silken cloth, a woman, a man, a cow, an elephant and a horse, and property belonging to a God, a Brâhmana or a king must be understood to be articles of superior value. The fraudulent deprivation of these by various means from persons who are asleep, insane or intoxicated, the wise call theft. "Leguminous grain" is covered by a sheath, such as the black or green kidney bean or the like "made of silk" is made of yarn produced from the sheath of a worm.

Of Adultery with women however Bhāspah has stated three varieties "Intercourse with women having a sinful origin, know to be of three varieties, the two caused by force or fraud while the third, the one resulting from passion" Adultery, is the intercourse of a man with another's wife. So also Narada. "With the wife of another at an odd time and at an odd place a man's sitting together, conversation or indulging in mirth are respectively the three kinds of Adultery" Brhaspati states the characteristics of the three varieties mentioned by himself. "What is done with one unwilling or insane, violent or intoxicated, as also with one talking in secret but what is done by force. Having deceitfully brought home or by offering wine or the result of operation, sexual intercourse made with her, is known to be one made with fraud. By mutual exchange of love glances or by the seducing of a maid servant what is done out of a passion for beauty or money that should be known to be one caused by passion. The result of operation is causing inducement by an operation."

Likewise the Same Author mentions a threefold variety by regard to the first midling and superior quality also. 'Casting sidelong glances mirth, sending a maid servant likewise the touch of ornaments and clothes is known as the first variety of Adultery. Sending perfumes, flowers, incense and sweet smells and clothes and conversation in secret, is known as the Adultery of a midling nature. Seating on one bed as also sporting, kissing embracing, this is declared as the highest kind of Adultery by those knowing the *Sutra Vyasa* also. 'Adultery should be known to be of three kinds, the lowest, the middest, and the highest. Conversation with another's wife in an improper place or at an improper time, or

Ch XII 62

2. was effected—induced by a claim, will or other hypnotizing operation

- in a solitary place throwing sidelong glances at each other, and (indulging in) laugh is known as the primary kind of adultery. Sending perfumes and flowers, colours ornaments, clothes and causing allurements by food and drink, is known as the middling variety of adultery. Sleeping and sitting in a solitary place in mutual contact as also pulling each other's hair is known as the highest (stage of) adultery. 'In a solitary place' i.e. in private 'By pulling each other's hair' i.e. sporting by pulling each other's hair. *Katyaiana* also mentions the varieties of adultery. 'Engaged in operations through a messenger, remaining together at untimely hours and improper places catching hold of the neckcloth in regard to the ear, nose, face &c sitting together and eating at one place thus adultery has been declared to be of nine varieties.' 'Cloth' i.e. the end of the cloth. So also 'If one holds conversation with another's wife at a holy place, in a forest or in a house even as also at a confluence of rivers, such a one may be charged with adultery.' 'Confluence' i.e. united flow. Also 'Sporting in (the form of) obligations, touch of the ornaments and clothes, as also sitting together on a cot, all (that) is declared as adultery. 'Sporting in obligation' i.e. pretending to do service such as by offering beetle or the like 'sport, i.e. jest. Also 'One who contacts a woman at an improper part as also one who bears up when contacted by mutual consent, that all has been declared to be adultery. 'Improper part, such as the breast and the like parts. *Narada*<sup>1</sup> also. Also when one catches in the hand the hand or the ends of a cloth or says 'stop stop, all that has been declared to be adultery.

- Likewise the Same Author<sup>2</sup> states the characteristics and varieties of Gambling and Betting on animals. 'Dishonest gambling with dice, small slices of leather, little stones of ivory or like others and also betting on birds, form a title of law called Gambling and Betting on Animals. *Brahma* is a small piece of leather. By the expression 'or like others' are included cowrie shells &c. Playing with dice &c. preceded by a bet 'dishonestly' i.e. made in a crooked way, is called 'gambling. Similarly, with the 'birds' i.e. with cocks and the like winged animals playing with a bet is called Betting on Animals. The meaning is, that these two together make up the single title 'Gambling and Betting on Animals. The use of birds is indicative by inclusion of animals. Hence also *Manu*<sup>3</sup>. That which is done by

( means of ) inanimate ( things ) is called in this world, Gambling , when animate beings are used, that should be known as Betting on Animals' **Brhaspati** also "Birds rams bulls and the like when caught up and attack each other under a bet made before, that they call 'Betting on Animals'

5

Of the **Miscellaneous Cases** the characteristics and kinds have been stated by **Narada** ' Title under the head of miscellaneous (cases) are to be known as transactions depending on the king, such as transactions under the Kings commandments as also obedience towards his injunctions Grants of towns the divisions of the constituent elements of a state, the laws applicable to the *Pikhanhs*, *Nagamas*, *Sreus* and *Gaias*, as also their opposites Likewise disputes between father and son, transgression of penances deprivation of donations accepted and also the indignity caused to members of the Orders The evil consequences of a commixture of the *varnas*, and the rules regulating their means of subsistence and whatever has not been noticed in the preceding titles all that shall be (included) under the Miscellaneous Title Whatever has to be determined upon by the king taking upon himself the position of a defendant such as transgression of his own commands and what, moreover has not been stated before in titles such as Recovery of Debts and the like all that is called the Miscellaneous Title this is the meaning

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**Brhaspati** ' Usury, Deposits Invalid of its Trading in joint undertakings also Non payment of wages Non performance of service Land Dispute Sale without ownership Rescission of Sale and Purchase Transgression of a compact likewise Connection between men and women Theft also share of Inheritance and Gambling with dice These titles arising from money transactions are however fourteen are again split further into numerous subdivisions The two kinds of assaults murder also and adultery with another mans wife likewise these four titles originate in injury—so says **Brhaspati** By regard to the lowest middlemost, and highest nature are split further on separately Of these the particular characteristics of the four have been stated in respective order These eighteen titles of law have been stated in the *Sastra* Those who know the origin of all these disputes these are the persons ( fit ) to investigate (them) '

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Thus in the **Smritichandrika** the discussion of the Eighteen titles

Now begin the Diversities of Judicial Proceedings under the Smṛtis  
—Smṛti Vyavahāra bhedaḥ.

PAGE 10\*

The multifariousness of Judicial proceedings has been stated as  
5 (arising) by regard to their nature and the subject matter involved  
Now, of the same, the varieties are being discussed by regard to the (exist-  
ence of) wager and the like. There Yājñavalkya<sup>1</sup>: "If a dispute is accom-  
panied by a wager<sup>2</sup>, then the defeated party should be made to pay."  
'If I am defeated, so much shall be paid by me to the king' thus  
10 out of arrogance money agreed to be paid is called 'wager' (*pana*). Accom-  
panied with that is one 'accompanied by wager.' By the use of the word  
'it,' (*that*), is meant one without a wager also

Thus a Judicial Proceeding or *Vyavahāra* is of two kinds

So also has been stated by Nārada:<sup>3</sup> "That with a wager, and  
15 (the other) without a wager; it should be known to be of two kinds; the one  
with a wager with an addition, where there is a stake before the writing".  
Where in a judicial proceeding, before the plaint is reduced to writing  
out of arrogance a stake is laid by both or by one of the disputants in  
an additional amount, that proceeding is with a wager; this is the  
20 meaning.

Similarly, other varieties also have been stated by the Same Author<sup>4</sup>:  
"That (i. e. *Vyavahāra*) has been declared to have four feet, four bases, and  
four means<sup>5</sup>; is declared to affect<sup>6</sup> four, reaches four,<sup>7</sup> and has four<sup>8</sup> func-  
tions Having eight *Āngas* (or members)<sup>9</sup>, of eighteen<sup>10</sup> titles, and hund-  
25 red branches likewise also; has three<sup>11</sup> sources of origin, two<sup>12</sup> pleas, two

1 Oh II 18      2 This is similar to the 'Wager of the Roman Law.  
; is in addition to the amount in dispute Cp. *Contested and Az parts*

बादी वा प्रातिवादी वा य समर्थ स्वकारणे । द्वय विनामुसारेण कतेति स पणं स्युः ॥

3 Intr 4      4 Intr 8

5 Explained in Nārada-Intr 12—thus

सामाधुपायसापत्न्यचतुःस्थान उच्यते । १ समर्थोपासनदण्डे (असहाय)

6 चतुर्हेतु — चतुर्णामाश्रयाणां च रक्षणस्य चतुर्हेतु — See Nārada Mtr 12

7 चतुर्व्यापि — चतुर्नयैः समन्विष्ट सप्तसप्तमनय च । व्यापिणि पादयोः परमाचतुर्व्यापि ततः स्युः । Intr 13

8 चतुष्करी — धर्मेश्वर्यस्य यशसो लोकरूपकेनेत्येव च । चतुर्णां करणविषां चतुष्करीति चोच्यते ॥ Intr. १५

9 अष्टांग — राजा सत्पुरुष सभा शस्त्र गणकलेखकी । द्विष्यमाद्विषयकमष्टांग सप्तदाह । Intr. १५.

10 अष्टादशपद — See above p 16 and Nārada Intr. 16-19 and 20 for शतशाल  
upra Verse 20

11 त्रिकोनि — कामाक्षीपात्र लोभाद्य विषयो यस्मात्त्रयवर्तते । त्रिकोनि स्त्रीवर्ते तेन त्रयमेव द्विषादृष्टम् ॥ २६

12 त्रयमिषोण — त्रयमिषोणस्तु त्रितेय शपथेनाभिविषेण । शपथसती दु सप्तगतिरर्थं होषामिर्विशान् ॥ २७.

openings<sup>1</sup> and two issues<sup>2</sup>. "The Same Author<sup>3</sup> himself expounds these varieties "Dharma,<sup>4</sup> a judicial trial, evidence, and the Royal edict, (thus) this judicial proceeding has four feet, each succeeding supersedes the one preceding'

Indeed, the Plaint, the Answer, the Evidence, and the Decision are the (four) parts of a judicial proceeding, and not *Dharma* etc. Why (then) has it thus been stated? The reply is this. The part of a decision is of four varieties according as it is based on *Dharma* and the like. There, that according to which a particular decision is given, that is indicated by that word. Therefore the description as of four parts, by a reference to *Dharma* etc. is proper also. So also *Brhāspati* "By *Dharma*, by a judicial trial, by evidence, and by the Royal edict by these four means a decision has been stated (to be reached) on a doubtful point'

Of the four kinds of decisions also, *Kātyāyana* states the characteristics 'Where the wrong doer is made answerable for the act, and the owner of property secures his rights, such a proceeding is according to *Dharma* only'. Wrong, such as killing etc. 'Act,' wrong doing "Whatever *smṛti* rules have been published by the *Dharma*-operator for the purpose of deciding proceedings, these indeed are known as *Vyavahāra*. The meaning is that *Vyavahāra* is a decision reached in accordance with legal principles and in conformity with the plaint answer etc. 'Whatever is practised by one whether it be according to *Dharma*, or not according to *Dharma*, (but) always in conformity with the usage of the country, that indeed is *Charitra* (custom). The meaning is that a decision following that is also similarly declared

'Without being in conflict with the principles of justice, as also with the observances of the country, that law which the king may promulgate that Royal edict is according to law. This is the meaning of this. A decision which has been reached by the king's mind only, (but) which is not opposed to any other (source of) authority is called the Royal edict

Here, of each kind *Brhāspati* states two further varieties. "Each one has been declared to be of two varieties by the wise by reason of a difference in

1 द्विद्वार — यस्य द्वयामि सप्तवार द्विद्वार सप्तवारः । द्वयवद्वयव । मित्र 28

2 द्विगति — द्वयवद्वयवद्वयवद्विगति सप्तवारः । 29

3 Intr 10.

4 The same Author explains these thus :

नव सवे शिवा धर्मः व्यवहारस्तु सन्निवृत्तिः । अस्ति कृत्वा कृत्वा सप्तवारः ॥ ११ ॥



the mode of proof" The twofold character also has been pointed out by the Same "Where, after carefully considering the point at issue, it is deliberated upon skilfully, and has been tested by (statements on)

- oaths, that has been declared to be a decision according to *Dharma* Where the defendant admits, such a decision is legal, or that which has been properly tested by ordeals, such a one has been declared to be the second" The meaning is, that what has been made along with *et* in accordance with principles is the first kind of decision called legal Without recourse to the principles that which is declared upon an admission of the claim in the answer, or is tested by ordeals, such is the second 'Where a decision has been reached by regard to the means of proof a chicanerous answer being regarded as 'no answer,' that is declared as the second" The proof here contemplated is human testimony, that which is decided by means of an ordeal being regarded as coming within a *Dharma* category. What is decided by inference is called *Charitra*, in accordance with the state of the country, is the second kind declared by the adepts in the *Sāstra* "Inference" *et* based upon a sign such as a burning faggot in the hand and the like "That decision, however, which is devoid of proof such a one is called the Royal edict, so another is stated to be by reason of its being unopposed to *sāstra*"

- The meaning of the expression 'devoid of proof' has been explained by *Vyāsa* "A document witnesses, and possession, thus proof has been stated to be of three kinds in the *smritis* The wise regard inference, as well as logical deduction as the cause The usage of a country established in the past is called *charitra* Truth balance etc in support of the point at issue are known as oaths In the absence of these, the wise regard the king's command as a decision"

- Indeed if it be so, then the text of *Nārada*, viz 'the ever succeeding supersedes the one preceding becomes inconsistent as a decision based on principles being *par excellence* the best, the one preceding would supersede the one following, and by reason of the text of *Yajñavalkya* "After discarding all circumventive the King should decide disputes according to the actual facts' The answer is, true, such is the general rule but in some matters the one following does certainly supersede the one preceding, it is in regard to that is this text of *Nārada* Thus for example, where by a particular member of the *Kshatriya* or other *varna*, has been

committed the offence of contacting or the like in regard to the wife of the king or the like and having done it such a one gives a denial through fear of life and witnesses also are cited, these too when questioned by the king intending that this man may not be punished with death make a false statement that 'this man did not do the act, then one who has committed an offence has not been fixed with it, the *Dharma* is contradicted by *Vyavahāra*, but such supersession of *Dharma* is proper also as a false statement by witnesses has been permitted by the rule<sup>1</sup> 'Where men of the (four) orders are (likely) to suffer capital punishment

Where, moreover, a certain person such as a cowherd or the like is charged by some one that he has had sexual intercourse with another man's wife and that there are witnesses, and he replies, 'this statement of the witnesses is true still also I am not punishable as I have done this on the strength of *charitra* or usage and this has been entered by the king in the book then *Vyavahāra* is superseded by *charitra*, as the punishment which was due under a *Vyavahāra* (a rule of the law) has been negated by usage (*charitra*)

Moreover, the supersession by *charitra* or usage here is proper also vide the text A dealing between the members of a village cowpen, town guild caravan or an army, should be decided by regard to usage, so says *Brhaspati*

Usage or *charitra* also is at times superseded by the Royal edict, where there is usage that no king's officer shall enter into the inner apartment of a family house and thereafter it became known to the king that a certain criminal had entered a house and then a certain officer of the king was ordered that after entering the house that accused should be brought, on such an occasion the usage even is superseded by the king's command as restraining the guilty being a necessary duty the king's command has greater force than usage

Bearing in mind a subject of this type it has been stated by *Brhaspati* also Where by placing reliance on *śāstra* merely a decision is made that should be known to be a judicial proceeding by that also the *Dharma* is developed<sup>2</sup> By (regard to) the

PAGE 12\* condition of the country by inference in conformity with the *Āgama* rules also, where a decision is reached there the legal rule is superseded Setting aside the prevailing

1 *Yajñavalkya* II 83 (1) Collection p 886

2 *वेदाय नमते*, another reading is *वेदायदीक्षते* as it is superseded by it.

custom where a king makes a decision with any authority, that is the king's command, by that usage is superseded'

The subject under discussion is now being discussed By way of explaining the expression 'four bases' he<sup>1</sup> says: "There on truth is based  
 5 *Dharma* while a judicial proceeding (rests) on (the statements of) the witnesses, *Charitra* on declarations<sup>2</sup> reduced to writing and on the command of the king an edict The mention of witnesses is indicative by implication of *Dharma Śāstra*, is also of the means of proof, other than the  
 10 orideals 'Declarations reduced to writing' is a document He states<sup>3</sup> the four means 'Because the few means of conciliation and the rest are adopted it is said to have four means' The import is that an agreement may be reached between the contending parties by means of conciliation and the like ways The Author<sup>4</sup> states the benefit to the four 'Because it protects the four orders, therefore it is said to benefit four' The use  
 15 of the word 'orders' (*śramas*), is intended to indicate the four *tarnas* also The Author<sup>5</sup> states how it reaches four Because it affects criminals witnesses the court assessors, and the king also to the extent of a quarter each, therefore it is said to reach four' The Author<sup>6</sup> states how it produces four results "Because it brings about these four, viz (*Dharma*)  
 20 justice wealth renown and esteem among the people therefore it is declared to produce four results 'Because it brings about these four, viz (*Dharma*) justice, wealth, renown and esteem among the people' is regard of the people The Author<sup>7</sup> states the eight members or *Angas* 'Because it consists of the king, together with his officer, the assessors of the Court,  
 25 *Sūtra* the accountant and the scribe, gold fire, and water therefore it is said to have eight members The use of these moreover, we will point out further on The exposition of the eighteen titles and hundred branches already made in the former section, may be followed here

The Author<sup>8</sup> states the three efficient causes "Because it proceeds  
 30 from carnal desire wrath or greed therefore it is said to have three different causes, these are the three sources of disputes of law' is in all cases according to the exigencies The Author<sup>9</sup> states the two modes of plaint 'It is said to have two modes of plaint, because a plaint may be either founded on suspicion or on fact' Here also He<sup>9</sup> gives an example: 'On

1 न च न्यायः Narada Intr 11 In this text has been stated a progressive appreciation of the relative for e of the several means of proof Admissions by parties witnesses documents and Royal edicts see *Amalāṅga*

2 प्रवक्तव्य—other readings are प्रवृत्ति or प्रवृत्ति 3 Intr 12 4 Intr 1\*

5 Intr: 13 6 Intr 14 7 Intr 15 8 Intr 26 9 Intr 27

suspicion, by reason of contact with bad people, and on fact at the sight of the stolen article' On account of association with rogues, thieves and the like bad people a suspicion of theft may occur even in regard to a good man The sight of the stolen article or the like or the tracing of a mark of a portion of the stolen thing or actual sight Association with the bad is (stated) only as an example Even of the good people though rich, by reason of the association a doubt is likely to arise as to a deposit Therefore this is not the definition of a complaint based on suspicion. 5

The Author<sup>1</sup> states the two openings— Because it is based on the statements of the two litigants therefore it is said to have two openings Of these, the first complaint is called the plaint and the declaration of the opponent, the Answer' : e in the dispute Opening: e the desire for the commencement of the suit 10

The Author<sup>2</sup> mentions the two issues ' Because it may be founded either on truth or an error therefore it is said to have two issues PAGE 13\* have two issues Truth is what rests on true facts Error is what rests on a mistake of facts Harita also mentions some varieties Having one basis arising from two, resting on two and having two results likewise' Kātyāyana, however expounds these: 'The origin of the point to be established what has been stated by the plaintiff soon delivery of what is due to be given and injury are the two stating causes The *Dharmasāstra* and the *Artha Śāstra* have been declared to be two shoulders and success as well as failure have been declared to be the two fruits 'Failure', : e defeat 15 20 25

Likewise, another division even has been pointed by the Same Author also 'The first complaint the answer the deliberation and the adducing of proof thus it has been declared to be having four feet' *Pratyākhyatam*— 'the deliberation' After the acceptance of the Answer (of the Defendant) the deliberation and decision of the Chief Judge and others, as to who of the two contending disputants should have 'the right to begin his evidence *Kriyā*, 'proof' documents and such other evidence the adducing of that is the portion 'relating to proof By reason of the point in dispute becoming the concluding portion of the proceeding, the parts relating to the deliberation and the proof also are the judicial proceeding and therefore has it been stated that it has been declared 'to have four feet' 30 35

Hence also by the Saagrahakâra the concluding portion also has been characterised as a 'Judicial proceeding' "In cases of disputes among men for their mutual interests, the adjudication of a just claim upon the statements is called a judicial proceeding" Some say that the deliberation is that  
 5 portion (of the proceeding) which consists of the exhibition of the result decisive of the success or defeat which removes all doubts about time or illusory evidence In their opinion it is only the number of the feet that is comprehended and not the order, as the part containing the deliberation falls to be the last

10 As to what has been stated by Yājñavalkya "If it (the proof) succeed, he obtains success, if otherwise, the reverse", there also, by the word 'success' is indicated the deliberative part resulting in success, and not in the form of success or defeat, as that exists even in an answer of admission (of the claim), and as there would be the possibility of a  
 15 contradiction with the text, 'Of two feet in (cases of) admissions Therefore the text of Yājñavalkya has the same import as that of Kātyāyana

Others, moreover, describe this text as having the same import as the text "On account of the plaint, the answer, the proof, the point to be  
 20 established, by the establishment of these in order, as it is cast in four parts, it is described as having four feet" In an answer of 'admission' however, no means of proof being indicated, and the point in the plaint not being necessitated to be established, there is no part containing the point to be established, and the establishment, and thus there is no con-  
 25 tradiction with the text 'of two parts in cases of admission' In this point of view, the order of the parts also has been pointed out in another Smṛti "There, the part containing the plaint is the first the second is the answer likewise, the part containing the proof is the other, and the fourth has been declared to be the decision."

0 Thus in the Smṛtichandrikâ the Divisions of Vyavahâra

Now the Determination of the Deciding Authority. *Nāgārjuna*

There Brhaspati "A judicial proceeding, although one, has been declared to be of numerous varieties by the wise, of that, the deciding  
 15 authority is the king, as also a very learned Brâhmana"

PAGE 14\* Brâhmana, known as the *Prâdhîrûka*—the chief Judge So says the Same Author "In a contested cause, he asks questions, and

cross questions likewise, speaks suavely, and nt first, and therefore is called a *Prādvāka* The meaning is, that he puts questions to the applicant and the respondent, therefore he is *Prāt*, and he declares the decision and with particularisation, so is *Vvāka* <sup>1</sup>, the designation so is literal. By Nārada also, while elaborating versatility in a Brāhmana, this designation has been pointed by another method "One who is thoroughly versed in the eighteen titles of law, and who knows the eight thousand divisions of these who is an expert in the science of politics and the like, and is a devoted student of Revelations <sup>2</sup> and the rules of tradition, h- who examines the (rules of) law relevant to the point in dispute, and comes to a deliberated decision on the point under consideration, is therefore called *Prādvāka* " Thus by both methods also : e by the literal and traditional interpretations, the result ns a fact also has come to be stated Moreover, it has been stated directly by Nārada <sup>3</sup> ' As an experienced surgeon extracts a dart by means of surgical instruments, even so the chief justice must extract the dart (of injury) from the lawsuit' 5

"A Brāhmana also" in this expression the word 'also' is indicative of inclusion of other judges also Hence also Manu <sup>4</sup> 'In these places, of men carrying on a dispute intensively by resorting to eternal rules of law they should make the decisions of these' 'In these places : e under the eighteen titles *Kātyāyana* also 'A king attains heaven, who investigates disputes according to law, with the help of the Chief Judge, the minister <sup>5</sup>, the religious preceptor the Brāhmanas and the councillors" 10

The Chief Judge, having the qualities as stated before One carrying on with him, is one 'with the Chief Judge In this manner in expressions 'with the ministers' and the compounds should be expounded in accordance with the number which will be mentioned hereafter 20

Of a minister moreover, the characteristics have been mentioned by Vyasa 'One should install a twice born man as a minister, who knows the import of all the *S'āstras*, is free from greed is expected to speak justly, a *Vyāsa*, a versatile scholar, and descended in a long continued 'heredity' 30

1 प्राट् + विवाक—He interrogates, investigates and decides

2 सुनिस्सृतिस्मरण—सुनि—What is heard; the Vedas the Revelations स्मृति—What is remembered—the Tradition 3 Intr III. 15 4 Ch VIII 8

5 अग्रय अग्र—near and स्व-निष्ठि—One who is in constant attendance upon a requisition In the popular usage, he is one of the eight ministers, composing the Cabinet of Ministers

- Although the word *Vipra* was already used, the mention again of the word 'twice born' is with the object of indicating that when a *Vipra* possessed of the aforesaid characteristics cannot be found a *kshatriya*, or a *Vaisya* possessed of these characteristics may be installed but not a *śūdra*.
- Since says the Same Author "Leaving aside the twice born, one who investigates causes along with the *Vrīkṣas* of such a one, the nation becomes agitated and his power and treasury also become extinct. A minister, in this, the singular number is only indicative as it is in regard to the point under consideration since in the text together with ministers and experienced councillors preserving a dignified appearance should he enter the Council Hall of Manu<sup>1</sup>, a rule having been laid down in regard to the entering into the assembly with many councillors the special mention in the expression 'experienced councillors, is with the object of demonstrating that by reason of their versatility in the rules useful for the matters to be disposed of there is use for these here.

- Similarly in regard to the *Brahmanas* also a plurality has been mentioned by the Same Author<sup>2</sup> in the first half 'A king desirous of investigating law suits, along with *Brahmanas*' 'Along with *Brahmanas*, &c with the learned is the implication. So also *Yājñavalkya*<sup>3</sup> "A king should administer justice along with learned *Brahmanas*. Although of these in regard to learning and the plurality of *Brahmanas* in the *śābha*, and in regard to the qualification of goodness there is no distinction with councillors still by regard to these not being appointed a distinction from these should be inferred. For these (&c the councillors) are appointed, hence also *Vasīṣṭha*<sup>4</sup> Whether appointed or not appointed knowing the *Dharma*, he must speak such a one utters a divine declaration who follows the *Śāstra*. As to what has been stated by *Narada* 'One who has not been appointed, must not speak on any account in a judicial proceeding, by one, however, who has been appointed must be delivered his opinion without any bias towards any party that has a reference to one who was unappointed and who had happened to be in regard to another business, otherwise there would be a contradiction with the text stated before, also it would secure the co-operation of *Brahmanas* and avoid a difficulty in regard to the other business.

1 Ch VIII 1

2 Ch II 1

3 Not found in *Vasīṣṭha*, but see*Narada* Intr III 2

4 Intr III 1

The *Purohita* 'the religious preceptor', however  
 PAGE 15\* should be one only So also Vyâsa, "The King should  
 invest a Brahmana from the North devoted (to his  
 interest) as the *Purohita*<sup>1</sup>, one who is accomplished in the study and  
 knowledge of the Vedas, who is noncovetous, and who is truthful Here 5  
 singleness is intended just as in the rule<sup>2</sup> 'He cuts the pole' by reference  
 to the object aimed at By saying devoted, the author points out that the  
*Purohita* should correct any unhridled inclination of the King in regard to  
 the punishable and the unpunishable Hence also, in the case of a trans-  
 gression by the King of the rule of punishment, a penance has been stated 10  
 by *Vasishtha*<sup>3</sup> for the *Purohita* even 'If one who has incurred a punish-  
 ment is allowed to go free, the King shall fast for one night for three  
 nights the *Purohita*, the *Purohita* shall observe the *Archchhra* for a punish-  
 ment against one not deserving of punishment, for three nights the King

The assessors, moreover, (may be) many So also *Narada*<sup>4</sup> 'The 15  
 King however, should select as assessors<sup>5</sup>, religious men of tried integrity,  
 who are able to bear like good bulls, the burden of the administration of  
 justice' The meaning is that he should appoint assessors for the pur-  
 pose of investigating judicial proceedings, by means such as (of giving  
 them) money remuneration and doing honour to them, and the like means, 20  
 so that these will not depart from the established rules in the courts  
 'Who are able to bear the burden of the administration of justice?'  
 anticipating this (question) says *Yājñavalkya* 'Men accomplished in  
 learning by the study and knowledge of the Vedas, who know the law, and  
 who speak the truth should be appointed as assessors by the King and 25  
 who are also evenly disposed to friends and foes alike These also the  
*Brahmanas* only so says *Katyayana* 'Moreover, he (i.e. the King)

1 The *Purohita* referred to here is not the ritual priest of the Royal family  
 It is a special Officer of the Court that is in contemplation

2 The maxim here referred to is the धृक्पुत्र-See *Mīmamsa* V 1-27 (fourteenth  
*Adhikarana*) and VI 3-4 & 57 (third and fourth *Adhikaranas*) धृक्पुत्र  
 in this the cutting of the pole has been ordained, here acts such as cutting paring  
 etc have been prescribed in regard to the pole The question arises whether for each  
 of these acts different poles are contemplated or these are to be performed on the one  
 and the same pole, the answer is that as all these acts are in regard to the same object,  
 one pole only is meant So here the several qualities stated are to be concentrated in  
 one person so that it is only one धृक्पुत्र who is contemplated

3 Dh S XIX 40-41  
 assembly or court

4 Intr III 4  
 Book II 2

5 धृक्पुत्र members of the



accompanied by assessors or councillors, who are steady, are special scholars are of high parentage, and who are the best of Brāhmanas, who are clever in interpreting the meaning of *Dharma Śāstra*, and who are accomplished in politics." Here Brhaspati mentions those who should be excluded. "Those who are ignorant of the usage of the country, who are unbelievers, or are excluded by the *Śāstra*, the arrogant, angry, covetous or distressed, must not be referred to in regard to a decision."

Likewise, the rule as to their number also the Same Author states. "Where, *Vipras* knowing the usage of the people and the Vedas, as well as the law, and being either seven, five, or even three, are sitting that assembly is equal (in sanctity) to a sacrificial assembly. Here, it should be understood, that in the case of the Chief Judge and others, by reason of money payment, these have only to assist, as is the case with the *Ritvik*, but they have no authority. The authority for deciding suits, however, is of the king only. Hence also here by the expression 'along with the Chief Judge' and the like, is the reference of him alone as the principal, and not of the others. The connection with the result also has been stated to be for him alone, and not of the others. Likewise, for not doing it, a sin having been pointed out in the *śrauti*, the permanent authority also is of the king only, as in the text "A king punishing the innocent (i.e. who did not deserve a punishment), and not punishing the guilty (i.e. who deserved a punishment), brings great infamy on himself, and goes to hell." A fault has been attributed by *Manu*<sup>1</sup> to the king himself. Hence also a rule has been pointed out by the Same Sage<sup>2</sup> in regard to others than the king when entering a court. 'Either the court must not be entered, or the truth must be spoken, a man who either speaks nothing, or speaks falsely, becomes sinful (guilty)'. Moreover, a rule has been stated by Brhaspati for the king in regard to his entering the court. "The king should investigate into the suits only when surrounded by three assessors, after entering the court and either sitting at the head or standing only." The meaning is 'accompanied by three assessors only' and not by one or by two. Therefore there is no contradiction with the number of assessors mentioned before. Therefore it has been established that as in the *Rājāsūya* sacrifice, so in regard to the decision of judicial proceedings the authority is of the king alone.

Moreover, here, by the word king is demonstrated by a secondary implication any one performing the function of a king such as the prote

tion of the subjects and the like, whether (he be) a Kshatriya, or of any other caste and anointed or unanointed, and not a PAGE 16\* Kshatriya<sup>1</sup> only, after (the manner of) the rule in the *Atreya*<sup>2</sup> maxim under which the word king in

1 The Author of the *Smṛtychandrikā* says that the word king here is not to be taken to be restrictively applicable to the Kshatriya alone, but it is used as indicative of any one who performs the function of the King, viz the protection of the subjects etc and that the word king is used here in its secondary and general sense as indicating one who governs, be he born a Kshatriya or of another Varna, be he duly anointed or not etc

For the word राज (Kingship) is explained as the function of a राजा; and a राजा is one who is born a Kshatriya as is asserted in the *Atreya Nyāya*

2 अग्निशयः—अग्नि means expiation (of sins) by sacrifices See Jaimini II 3 3 अग्ने यज्ञसमो गन्तुं क्रतुमशनुष्यते। Second Adhikarana Also see further on, XI 4-3 (9-11) (Third Adhikarana) अग्ने वै रुद्राय स्वादिहृदमनात् (१) ययनात्मसमवेगे (२)। कल्पयासाविनि च। वर्णसदेवत् (११) See pages 93 and 653 of *अग्नि-सामन्ता* Vol 24

In the chapter on *Rajasya* sacrifice, a sacrifice called अग्ने *Atreya* is stated in the *Śruti*

अग्निमष्टाकपात्रं निषेत् द्विषेत् दक्षिणा । वैश्वेकादसकपात्रम्, कल्पो द्विषा ।  
वैश्वेन चरम्, विनाही चट्टी ही दक्षिणा &c ।

"He offers a cake baked on eight potsherds to Agni with gold as the *dakṣiṇā*, a cake baked on eleven potsherds to Iedra with a hull as the *dakṣiṇā* boiled rice to the *vaiśveṇa*, and for the *dakṣiṇā* a tawny coloured cow of six years etc

The question is whether in these ceremonies the parts should be performed all at a time (समेग) or separately (आगत) The reply is that they are to be performed at a time (समेग) because there is a *समेग* (३)

In the same sacrifice occurs farther the text

यदि ब्राह्मणो यजेत चादरा ये सवे निषावदुनि ह्यत्र नयन्तिषावेत्  
यदि राज य वैश्वम् यदि वैश्व वैश्वेन वैश्वेन ।

If a Brahmana offers a sacrifice, after placing it in the middle and making an oblation to Brahmapati he should sprinkle ghee over it, if a Rajanya, to Indra and a Vaisya, to Visvedeva Here सवे निषाव placing in the middle &c ' indicates one performance There is that another text which refers to a special desire of a ययनात्मसमवेगस्य यज्ञस्य । It can be made to offer a sacrifice, who has a desire for food &c " Thus there is unity of purpose and number which shows that the *Atreya* is one, and that the subordinate parts should be performed once for all

The position may be briefly put in the words of *Yāska Sāmān* thus (1) राजा यज्ञस्यैव स्वागत्यकाया यज्ञेन is the ineptive text for the यज्ञस्यैव In the same context occurs farther the text (2) अग्निमष्टाकपात्रम् etc Then also occurs farther on the text (3) यदि ब्रह्मणो यज्ञेन etc In regard to these texts, there arises the question—Do these texts refer to the Brahmanas, Kshatriyas and Vaisyas as laying down the condition under which the details—e g as to *Brahmapati Indra* &c—are to be adopted at the Rajasya, or is the *Atreya* a distinct sacrifice prescribed? The answer is that the *Atreya* is an independent sacrifice and applicable only to the Kshatriya caste (For a detailed discussion see *अग्नि-सामन्ता* on II 3 3 )

the Vedic command 'A king should perform a Râjasûya sacrifice,' is restricted to the kshatriya varna and is the principal object, under its literal aspect, viz kingship is the function of a king. The use of the word king as indicating one who governs has been regarded as secondary in the use of that word by the Aryas such as Manu and others, as has been stated in the *Aśv* (top c) *Adhikarana* itself

Therefore, by Brhaspati, the (duty of) entering the court has been pointed out "After getting up in the morning, and after having performed the ablutions in accordance with the rules, having duly honoured with flowers ornaments and clothes the elders, the scholars in Astrology, the medical doctors, the Gods, the Brâhmanas and the priests—all these according to their merits, and after having paid obeisance to the preceptors and the like, the leader at the head should enter the court" For this reason also the investigation of suits has been stated to be by the same, by Yājñavalkya also "The king should investigate complaints etc."

As to what has been stated by *Prajapati* "A king consecrated by anointment, or a Brâhmana well versed all round, when seated on the seat of justice, should investigate complaints, unperturbed" 'Unperturbed' *Amulbanah* i.e. unarrogantly, this even is intended as laying down a command that an anointed king should investigate complaints, and not as prohibiting others, for in that case there would be the incongruity of a restrictive exclusion (*Puramkhyā*)<sup>2</sup> Hence also by the Same Author has been stated thereafter 'In this manner the kshatriyas, or the headmen<sup>3</sup> in their own country severally, while in the case of other kings, a leading Brâhmana should do (it)' The meaning is that seated on the seat of justice, free from arrogance, the kshatriyas and the Samantas should investigate disputes. Other kings, however, i.e. of the Brâhmana, Vaisya or other castes, for the purpose of accomplishing their duty should always invest a leading Brâhmana alone as the investigator of disputes. As for the alternative course stated by the same Author viz 'Or a Brâhmana well versed all round that also is not intended as demonstrating the right of a Brâhmana but as indicating that without the king, even a well versed Brâhmana or a Chief Judge may investigate under the king's

1 Book II 1    2 See note 3 on pages 219-223 Mitakshara Collection Vol II (I)

3 सामन्त—सम्प्रदायक—those who belong to the neighbourhood. One living on the border. It also means a feudatory prince as contrasted with a paramount sovereign अधिराज. It also means a leader or g in a village, the headman

authority, as it has been already pointed out <sup>1</sup> before that a Brāhmana has no authority to investigate disputes Hence also Viṣṇu <sup>2</sup> "Or he should appoint a Brāhmana for investigating disputes" With this import also, Brhaspati even "The king should investigate causes or a twice born Chief Judge, by placing before him the principles of justice, and abiding by the opinions of the Sabhyas and the *S'āstra*." This moreover, is an alternative course when the king himself does not look into, and then only. To that effect also Manu <sup>3</sup> "When, however, the king does not himself investigate the causes, then he should appoint a learned Brāhmana for trying the suits" "Learned," i.e. well versed. Hence also Kātyāyana "One who has studied one branch of learning (only) will not know how to decide causes, the more the best of the versatile should be appointed by the kings in regard to disputes" The use of the word 'versatility' is with a view to indicate other qualities also So also it has been said "One who is not hard, is sweet, of an affectionate disposition, born of (a good) heredity, farsighted, energetic and uncovetous also, should be appointed by the king in (the matter of) a dispute" Kātyāyana also "When the king does not himself decide a cause, then in such a case he should engage a Brāhmana who has mastered the *Sāstra*. One who is vigilant, well born, impartial, not likely to create distrust, who is firm, who is afraid of the next world, devoted to religion is industrious, and devoid of anger "When i.e. owing to absorption in another business, is the supplement To that effect also Yājñavalkya <sup>4</sup> "Unable to attend to the administration of justice on account of other engagements, by a king should be appointed to work (in his place) along with the councillors, a Brāhmana knowing all laws" The meaning is that on account of his being engrossed in another business weightier than the administration of justice, by a king not (being free for) investigating causes, with three assessors only should be enjoined the Chief Judge and not along with the Amatyas or other ministers Hence also Manu <sup>5</sup> "That (one) shall carefully investigate his causes accompanied by three assessors only, having entered the leading court, and either sitting or standing The restriction in the expression 'assessors only' is intended to exclude others, and 'by three' is intended to exclude the number of five or seven With this very

Para 17\*

1 See p. 26 ll 15 &c above (Sanskrit p 15 ll 19-20)

2 Ch III 51 B B 1 p 20 173

3 Ch VIII 9

4 Book II 3

5 Ch VIII 10

6 See Bājambhatti p 3 L 14. *अथ राजा न्यायं करोति* 1 See Jaimini Ch. XII 34-45 (Fifth Adhikarana) Ānandashrama Series Vol. 24 p 625,

- import Vyāsa also "Since he interrogates with effort in pursuance of the point in dispute along with the assessors and by means of which he investigates, therefore he is called the *Prādhika* 'the Chief Judge' Here *Katyāyana* 1 "Where a *Brāhmana* is not available, there (the king) should appoint a *Kṣatriya* or a *Vaiśya* who is learned in law, he should, with effort, avoid a *Śūdra* 2 'A *Brāhmana* 3 : a learned one To that effect the same Author "Where a *Vipra* is not found who is learned there (the king) should appoint a *Kṣatriya*, or a *Vaiśya* knowing the *Dharma Śāstra*, one should with effort avoid a *Śūdra*." In the expression '*Kṣatriya*' appears to be contemplated a 'learned' 4 has been (the qualification) directed to be in the case of a learned *Brāhmana* In saying 'with effort,' the Author points out that by non exclusion, great harm would take place That has, moreover, been spoken to by *Manu* 5 . "Of a king for whom a *Śūdra* makes the examination of the law, of such a one the kingdom sinks low, like a cow in a morass" Thus even when a *Kṣatriya* or a *Vaiśya* knowing the *Dharma Śāstra* is not available, a *Śūdra* should be avoided To that effect, moreover, has been stated by the same Author 6 "A *Brāhmana* who subsists only by the name of his caste, or one who merely calls himself a *Brāhmana*, may be an interpreter of the king's laws but never a *Śūdra* on any account." 'Who subsists only by the name of his caste,' and not one who earns his subsistence on account of his learning and character

- Vyāsa*, however, states a fault in accepting a *Śūdra*, in the post of a minister even 'Leaving aside the twice born, one who looks into the causes in company with the *Śūdras* of such a one the nation will be violently agitated, and his force and treasury also will perish" The import is that therefore, to avoid this calamity, even in the posts of ministers and the like, he should exclude the *Śūdras* Likewise, by way of pleasing the nation, one should have in the assembly the company of some tradesmen also, so says *Katyāyana* "Attended by a number of tradesmen from guilds, and possessing the qualification of a good family, character, advanced age, and opulence in wealth, and devoid of jealousy 7 'From guilds', i.e. belonging to a group Likewise, the

1 See *Vyavahara Mayukha Śikha* Text p 2 l 24 Engl. Tr p 5 ll 7-9

2 Ch VIII 21

3 Ch VIII 20

4 *ब्राह्मणसूत्र* —The suffix *सूत्र* is used to indicate that a person professing or pretending to be or calling himself by a name to which he has no real title *अप नम* also used in a similar sense *अ ह ५ देवमयः इति शब्दं कृतवतः । मेधा निधि*

Same Author mentions their duty also, 'There, the tradesmen should be invested as investigators of justice

Similarly, an accountant and a scribe should also be created by the King, so says Brhaspati 'The King should appoint two persons as an accountant and a scribe, who know the principles<sup>1</sup> of the science of words and names, who have studied the lexicons who are skilful accountants, who are pure, and who are acquainted with various alphabets Vyâsa also 'The King should appoint an accountant who is an accomplished scholar of the three sections of the science<sup>2</sup> of the heavenly bodies, who can yield a clear result, and who is accomplished in the study and knowledge of the Vedas He should appoint one with a clear handwriting who can use appropriate words, who is pure, who can use clear syllables, who has subdued anger, is uncovetous, and who is truth speaking 'Who is an accomplished scholar of the three sections of the science of the heavenly bodies', &c who is an accomplished scholar in the three parts of the science of Astrology viz *Horâ*<sup>3</sup>, Mathematical calculation and the constituted Texts<sup>4</sup> The qualification 'accomplished in the study and knowledge of the Vedas' is intended to establish that the accountant should be of the twice born class, as such a one is impossible from among the Sudras and the like The scribe also, as he is in company with him should also be a twice born only Hence also with a view to obviate the twice bornness of Sâdhyapâla the inclusion of a Sûdra has been made by the Same Author

A *Sidhyapâla* should be appointed by the King who would bring about the accomplishment of the object to be established one who is a hereditarily born Sûdra strong, and one abiding by the orders of the assessors'. 'Of the object to be established &c such as summoning the plaintiff etc the defendant witnesses &c So also Brhaspati 'For summoning the witnesses the Plaintiff, and the Defendant and for their protection, a truthful and confidential man should be appointed, subject to the authority of the Assessors 'Summoning', &c wanting to come The meaning is that one's own

PAGE 18\*

1 शब्दविधान-ज्ञे—Borrodaila\* translates 'Skilled in expounding words' while Mandalik 'Who know the principles of grammar

2 ज्य विद्वान्—one well versed in Astrology and Astronomy

3 होरा—horoscopy The rising of a zodiacal sign—हारा दृ लभे राचर्थ रेखाशास्त्रविद्यया,  
(मेदिना)

4 संहिता—a continuous systematic collection of texts put together

man who is born in a hereditary line such a one should be appointed by the King (to work) subject to the authority of the Assessors

In this manner these places of decision of a high type have been stated by Manu and others. By Bhṛgu however, has been stated even the  
 5 'lower type of the places of justice'. Bhṛgu stated ten places for disputes and five (more) also, by which disputants having reached a state of difference, reach a decision. These fifteen places moreover, have been pointed out by the Same Author. "The foresters however, should do by those of their own, those of a caravan, by the caravans, the army men  
 10 by the army men, in a town even by the inhabitants of both. The familymen, the leaders of caravans, the inhabitants of towns and villages, adopt a place as desired with the consent of both. The Villagers, Townspeople, Associations, Guilds men learned in all the four lores, members of particular groups, families and members of families persons  
 15 appointed and the King likewise." Here the first five places are for the special classes of men such as the foresters and the like only. In a dispute between men established in the form of a town the decision is by the residents of the neighbourhood. Men of a family, leaders of caravans, and inhabitants of towns and villages, select a place approved of by the unrepentant plaintiff and defendant. The ten places such as the village and like  
 20 others are common. *Grāma* 'a town, or a village': i.e. people settled in the form of a village or town. *Townspeople*, i.e. the assemblage of the inhabitants of a town. *Gana* 'Association': i.e. a collection of families or under the Smṛti of Kātyāyana 'An assemblage of families, however, is called *Gana* (Association)'. 'Guilds', (*Śreṇis*) the eighteen lower classes such as the washerman, and like others. 'Men learned in the four lores', i.e. men versed in the four branches of knowledge such as the metaphysics and the like. The word also 'cha, in the expression 'men learned in four  
 25 lores also', is indicative of a combination of other learned men with the men learned in the four lores, as Pīṭamaha has prohibited one man (only) from declaring the law (in the following text). "Therefore one alone although knowing the rules of laws should never declare under the law." *Vargina* 'members of particular groups', such as, the *ganās* and the like. 'The associations (*ganās*), unions of heretics also the *Vratīs*, and the  
 30 *Śreṇis*, as also those others who are (members) of the combinations *Samāhas*, these are called the *Vargyas*, so (says) Brhāpati." vide this Smṛti of Kātyāyana. The mention of the name of Brhāpati is with the object of pointing out that this tradition about the *Ganās* etc. was well known even before. The association of the arm bearers is (called) *Vṛita*

"The bearers of several arms when associated together are called *Vīratas*" so, having been stated by the Same Author *Kūṭim*, families, i.e. the sagotras of the plaintiff and the defendant *Kūdikas*, 'of the families', some of the seniors among the *gotrajas* of the plaintiff and the defendant 'The appointed' i.e. along with the Chief Judge, the three assessors 'The King' i.e. along with the *Brāhmanas* 5

In this connection *Bṛhaspati*<sup>1</sup> "Established or stationary, not established, under the (Royal) seal, and under the *S'āstras*, are stated to be the fourfold varieties of courts, and the members of the *Sabhas* are also of the same kinds" The court which is held at a place like a forest and the like is 'not stationary' or established (*Apratishthitā*) Generally not being possible to shift to other places and in the case of inhabitants of both the places and the like, that being absent, it is stationary (*Pratishthitā*) In the case of the appointed councillors, moreover, being accompanied by the (Royal) signet, Law, and the President it is *Mudritā*, under the (Royal) seal In the case of the King, however, being controlled by the *S'āstra* it is *S'āstritā* (Under the *S'āstra*) This classification, however, has been pointed out by the Same Author "The (permanently) established *Pratishthitā* (Court) is in a town, in a village is a moving one called the unestablished *Apratishthitā*, the one with the Royal signet is joined with a President and that having the King is enjoined by the *S'āstras*" 'The President, i.e. the Chief Judge as he has been invested with the power of investigating legal proceedings In his hand, moreover, should be given by the King his own signet for the production of the Defendant and others, this is inferable from this (fact itself) There the *Pratishthitā* and *Apratishthitā* Court should be caused by the disputants themselves desiring a decision by payment of money, showing respect and the like means, as under the injunction of the *S'āstra*, in the absence of an initiation by the King, there cannot be constituted a Court. The one under the (Royal) signet, and that under the *S'āstra* also are to be organised by the King himself in the exercise of his own authority Therefore, there, those desiring a decision have to approach him alone, and not to constitute a Court (assembly) There, *Pitāmaha* states the superiority of the Court under the *S'āstra* over other kinds of Courts "The disputes which had gone to the first Court, whether in accordance with the law, or not in conformity to law, if these resort to 35

1 See *Apararka* p. 600 Another reading is शास्त्रिणा for शास्त्रिणा, स निना is also another



the King's Court, these refer to the former plaintiff 'Former plaintiff', i.e. the (plaintiff's) first complaint. The use of the expression 'King's Court', is indicative, by an extended application, of superior Courts.

- 5 PAGE 19\* Since the Same Author says, "What has been decided (by a Court) in a village should go to (the Court in) the town while that decided by (the Court in) the town, (should go) to the King, when it has been decided by the King whether a good or a bad decision there is no revival of that." Nârada<sup>1</sup> also "The *Kûla*, *S'tems*, *Pûjars*, an officer appointed (by the King) and the King (himself) are established for deciding disputes, and among  
10 these each succeeding is superior to the one preceding it in the order.

Thus in the *Smritichandrikâ* the rule about the Deciding Authorities

Now the Law Court—Swadharma Sâhanevasthânam

- There Kâtyâyana "That place is indeed called a Court of Justice, where in accordance with a consideration (of the rules) of religion and law  
15 (*dharma âstra*) a discriminatory examination of the real point at issue has been authorised to be made". The place where, of the point at issue, i.e. the fact as set out in the complaint a discriminatory examination of the reality, there the conclusion in accordance with the *Dharma* and *S'âstra* by the deciding authorities is authorised, is set out, that place, is called  
20 the Court of Justice, by reason of its derivation from the fact that a discriminatory consideration according to the *Dharma Sâstra* is authorised. It, indeed, indicates that it is well known

- This Court of Justice, moreover, should be erected in the Eastern direction. To that effect is Sankha "The Court of Justice  
25 should be in the Eastern direction, that, moreover should be provided with fire and water. 'In the Eastern direction, i.e. from the King's palace. Hence also Brhaspati "The king should erect a residential building in a fortress, having water and trees around (it), (and) on the  
30 eastern side of it (i.e. of the house) should be located the Court-room, properly constituted and facing the east. Containing flowers, incense, seats, and provided with seeds, jewels, and containing the images, documents, and divinities also and likewise provided with fire and water".

- The court room designed and constructed in this manner, one should enter in the morning after offering oblations into the fire. So also Manu<sup>2</sup>:  
35 \* HANU got up in the last watch (of the night), having performed the

ablutions, with a concentrated mind having offered oblations into the fire, and after having worshipped Brâhmanas, (the king) should indeed enter the hall of audience of auspicious signs." Here, in the expression (*Archya*) 'after having worshipped' although there is no compound, still the transformation of the gerundial termination into, *ya* is not faulty, on account of poetic license. The conclusion is that the king should enter. Hence also Bṛhaspati: "Having got up in the morning, a king after having performed the ablutions, with concentrated attention having properly worshipped with good flowers, ornaments and clothes, the elders, the astrologers, the scholars, the gods, the Brâhmanas, the family priests, and after having paid obeisance to the teachers etc should enter the hall of audience." Here the construction is that the king should enter. The plural number in the word 'family priests,' is expressive of the act only, as in the case of *pâds*<sup>1</sup> and not of plurality, as the family priest is one.

The king also should enter along with the Brâhmanas and the like, to that effect also Manu<sup>2</sup> "A king, desirous of investigating disputes should enter the hall of justice preserving a dignified demeanour along with the Brâhmanas, and also accompanied by ministers versed in ministrations." Here the word *cha*, 'and also', is intended to indicate the chief judge, family priest, assessors, associations of trades people, accountant, scribe, the steward of justice, gold *Dharmasâstras* also, of these also, like the Brâhmana, there being a use in regard to the investigation. There the use of some has been pointed out in regard to the decision about the judges. Here the use of some (others) will hereafter be stated.

In regard to the entry into the hall of audience, Samvarta states a special rule: "Having offered salutations to the guardians of the quarters, and entered the spacious hall of audience, a king should give protection to the subjects by investigating causes." The

PAGE 20\* locative case here is indicative of means. The meaning is that, by means of investigating causes, he should offer protection to the subjects. The use of it as a means may be observed

1 वासानि निवृत्—See Pāṇini IV II 49 वासादिभ्यो ष. The suffix ष is added to indicate plural, collection e.g. वासा—a net ; e a collection of ropes or nooses; (वासानां सङ्ग्रहः), so also कृषा—heap of grass, hay stack चरा, वन्या, वात्या &c

The meaning is that the plural in पुणेहिताद् does not indicate plurality of persons, but plurality of actions or functions

mediately by the detection of the offender which is useful in the matter of the governance of the people

In this manner having stated the seating of those who had entered the court room, which followed as of course, *Bṛhaspati* states the rules as to the quarters in regard to some "With his face turned to the east should sit the king the assessors with faces turned to the north the accountant with his face towards the west, and the scribe with his face towards the south Gold, fire water, and indeed the *Ābharaṇa Śāstras* also, the king should deposit in the middle of these, and religious merit and also auspices"

10 The seating of others moreover, should be according to convenience, as there is no rule (in that behalf)

In this manner an assembly made of the ten accompaniments helpful in regard to disputes, such as the king and others, is like a sacrificial assembly, so says the Same Author "The king the duly appointed officer, the assessors also, the *smṛti* the accountant and the scribe gold, fire, water, its own officer, these accessory means are indeed ten The assembly in which, with this ten limbed instrument a king investigates law suits with a determined resolution, that assembly is comparable to a sacrifice" 'Duly appointed office', i.e., the Chief judge 'Its own officer,' i.e.

15 the steward of the court

The Same Author also states the duty of the accessory members "Of these ten also, the function of each separately has been stated - The president is the speaker the king is to issue orders, the assessors are the investigators of the cause, the *smṛti* declares the final decision the success (of a party), the grant of relief, and the punishment also, for the purpose of the oath, the gold and fire, and for the thirsty and the agitated, the water, the accountant is to calculate the amount and the scribe to write out the judgment and decision The steward should do the bringing in of the opponent and the councillors, is also of the witnesses, and should always guard the plaintiff and the defendant (who may be) without a surety"

20

The expression 'the president is the speaker,' is intended as a rule *par excellence* since *Vaṁśī* has stated that "Even the assessors and the others also knowing the law must necessarily speak" 'The king to issue orders,' this expression is also intended as applicable to (whomsoever has) the capacity for causing money (to be paid), punishment and fine to be inflicted as the same Author has stated that "the punishment by means of a wordy reproof or by the expression 'fie' *dhū*, may be

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administered by the Chief Judge even ' Moreover, after stating that the (person having) authority for giving a decision is the king, and a Brāhmana of versatile learning ' it has been stated "The (right for the) punishment or oral reproof, and by the expression *dhik*, also have been stated to be limited to the Brāhmana only, and the (right for) monetary punishment and the punishment by corporal infliction are both restricted to the king ' Of the permanently established and the impermanent councillors however, by reason of the absence of any particular command, there is no rule

Having seated themselves at an auspicious place after having given the decision merely, they may retire, as they have no authority either to award punishment or direct a money payment In disputes about heinous crimes, however, they should not even give a decision Hence says Brhaspati "Those of the families associations, guilds and the like, who have been duly invested by the king, these should investigate the causes of men, excepting the decisions about heinous offences "

The court invested with the (Royal) signet however, is equal to the assembly of the Brāhmana as says Manu ' The place where sit down Brāhmanas versed in the Vedas and three in number and also the learned man appointed by the king they regard that as the assembly of Brāhman . ' Appointed (*Prakṛito*) & invested with authority, i. e. in short the Chief Judge

Among the *sabhyas* also, those of the assessors who create in the plaintiff and others satisfaction, such assessors become praiseworthy, so says Vyāsa ' The assessor who causes satisfaction to the plaintiff the defendant, the assessors the scribe and the spectators also, with passages from religious

PAGE 21\* literature, such an assessor attains praiseworthiness "

Similarly the Same Author says that the assessor who removes away doubts from the disputants and others is their life giver "Of the men who carry on a dispute with each other through misapprehension one who removes their doubt, that assessor has been declared to be a life giver ' i. e. one who wards off men from a mutual quarrel Vasishtha states the result to a life giver ' That merit which accrues for lifting up a dying Brāhmana from a pool of water, the same is the merit for lifting up one from a dispute at law The expression 'one dying' is also properly applicable to the person who is here the subject<sup>2</sup> of comparison

1 Ch VIII 11

2 *वर्जितम्*—that which is the subject of an illustration i. e. the *वद्वेय* thus here the litigant

Moreover Brhaspati states the result to particular assessors "Those who are immersed in the darkness of ignorance and are shrouded under the veil of suspicion, one who renders these free from distemper with the pin<sup>1</sup> of the collyrium of knowledge, such a one obtains fame here, and  
 5 also honour from the king, and a (lasting) place in heaven also. Casting off avarice hatred and the like, one who reaches the decision of the cause by (following) the rules laid down in the *Sāstra* to such a one accrues the fruit of a sacrifice."

- For those, moreover who make a decision by transgressing  
 10 the *Sāstra* commands *Kaṭyāyana* states the sin (accruing) to these. Where a decision has been given by the councillors (*Sabhyas*) by transgressing the rules of justice (*Nyāyāśāstra*) there justice (*Dharma*) being destroyed by injustice (*Adharma*) will destroy, (them) (and there is) no doubt. Similarly also a sin has been pointed out by the Same  
 15 Author for not warding off a king intent on (doing) injustice. The members sitting in court should not tolerate one who is set about (doing) an injustice. Those who tolerate fall along with the king into the hell with faces turned downwards. Therefore he should not be followed by the members of the Court, so says the Same Author! "Those members of  
 20 the Court in such a case who follow him even though he proceeds unjustly these even themselves become participants in it and therefore the king should be admonished by them by degrees. From the expression (*Sanau*) by degrees a contradictory statement for fear of sin, may not be made at that very time but in course of time. Hence also has been stated by the Same Author. Having come to know that the mind of the king has  
 25 swerved from the path of Justice at that time what is agreeable to him may be stated. A councillor does not become a sinner on account of that. *Manu*<sup>2</sup>, however, states a sin for those councillors who do not make a protest against an unjust decision being given. Where Justice is des-  
 30 troyed by injustice or truth by falsehood while the councillors are sitting in the Court and looking on there the Councillors are (also) destroyed. "While looking on in this the genitive case is used to indicate disrespect"<sup>3</sup>.

1 कलत्रजलशयन—CP कलत्रजल शयन कलत्रजलशयनया । अथुह दीप्त्य यन लभ्य पदविशेष  
 नम ॥ श्रुता ६४

2 Ch. V III 11

3 अनादरे णे—La m. II 3 3<sup>9</sup> for other uses of the Cacc see II 3 3<sup>9</sup>  
 40 and 41

Moreover, for a decision it law by disregarding some of the councillors, a sin has been pointed out by the Same Author<sup>1</sup> 'But where justice wounded by injustice, remains in a Court assembly, and they do not extract the dart from it there the Members of the Court also are wounded (by the dart) The non removal of the dart is determined also by the absence of the consent of all the councillors So also Nārada<sup>2</sup> 'Where all the members of the judicial assembly opine 'this is right,' that decision becomes free from a dart, otherwise, however, it has a dart in it.' Therefore, for self protection, justice must never be wounded, so says Manu<sup>3</sup> "Justice being violated, destroys justice, being preserved, preserves, therefore, justice must not be violated, lest violated justice destroy us" Moreover, for avoiding the degradation to the *Vṛshala*s<sup>4</sup> status one should secure a non violence to justice, so says the Same Author<sup>5</sup> 'For indeed, divine justice is (said to be) the (sacred) bull (*Vṛsha*), one who causes obstruction to it, such as one the gods consider to be *Vṛshala* therefore one should not violate justice' Alam, 'obstruction' is a transgression Harita however, states a hell for a *Vṛshala* "As a blind man eats a thorny fish, so does one who being in an assembly speaks in ignorance in distortion of the real fact"

PAGE 22\* Here Nārada<sup>6</sup>

Therefore a member of a judicial assembly, having entered the court, freeing himself from attachment or hatred, should so make a declaration that he may not fall into a hell 'What kind of declaration (should it be) for the avoidance of a hell? So says the Same Author<sup>7</sup> 'In proceedings correctly decided the members of the court attain purification Indeed, their innocence depends upon the justice of their decisions, therefore one should declare justice alone Their, is of the decisions Kalyāṇa also 'A councillor must necessarily declare an opinion which is in consonance with *Dharma* (Law) and *Arth* is if the king do not listen the councillor however, becomes blameless on that account In consonance with *Artha*' is containing the principles of the science of politics Manu<sup>8</sup> also 'The king, however, becomes blameless, the councillor is freed the sin accrues to the perpetrator where one deserving of censure is censured Either the court must not be entered, or the truth must be spoken, a man who either speaks nothing or speaks falsely,

1 Ch V III 12

2 Intr III 23

3 Ch V III 13

4 वृशाल—Status of a *Vṛshala* or *Śūdra*

5 Ch V III 16

6 Intr III 13

7 Intr IV 7

8 Ch V III 19, 23

becomes sinful ( guilty )." As to what has been stated by him<sup>1</sup> :  
 "One should speak the truth, one should say what is pleasing, one should not utter a disagreeable truth" that has a reference to other than one giving a decision, since it has been stated that in such a case without partiality, an unpleasant declaration may even be made

In this way in spite of the rule as to immunity from any benefit or disadvantage, a councillor who under the influence of an intensive passion or the like, declares a decision of a dispute contrary to the Smṛti, Usage or Justice, for such a one Nārada<sup>2</sup> propounds a punishment: "Whether through passion, or through ignorance, or out of avarice, one who pronounces a perverse judgment such a Councillor should be regarded as not a member of the Court, and such a sinner, one (i.e. the King) should punish severely." Kātyāyana also "Through friendship, or through ignorance even, or through infatuity also, there the councillor is guilty of a false declaration, such a councillor has been declared to be liable to be punished". 'Friendship' i.e. attachment, 'infatuity' i.e. distorted knowledge

Here, one declaring a false decision under the influence of passion, avarice or through fear even, should be punished with an amount which is double that of the fine (prescribed) for a defeat in the dispute, so says Yājñavalkya<sup>3</sup> "Out of passion, avarice, or even through fear, councillors acting in departure from the rules of the Smṛti or from a similar cause, should each be separately punished with a fine double that in dispute" In a dispute, the punishment which accrues upon a defeat, the double of that should he be compelled to pay, this interpretation which is according to the opinions of many commentators should be accepted, and not, moreover, double the amount in dispute, as is the import of some commentator, as it would not be proper. The impropriety, moreover, has been explained by many commentators, and so is not stated here again through fear of prolixity.

In the same manner also should be punished those who give a false decision under the influence of infatuity, so says Kātyāyana "After correctly understanding how to decide the cause a councillor should thereafter declare the decision, he should never declare a false decision. One who (so declares) becomes liable for a double fine"

Those, however, who declare a false decision through ignorance or anger, in the absence of a particular rule, the text of Brhaspati stated generally in

regard to the councillors applies in such a case "The Councillors who declare an unjust decision similarly those who live upon bribes, as also those who commit a breach of trust all these should be expelled" Those who live upon bribes has a reference to others than the councillors, as in the text of Vishnu<sup>1</sup> 'Of false witnesses the entire property shall be confiscated, as also for councillors who live by bribes, (the punishment of) the confiscation of the entire property having been stated in regard to the Councillors

As for what has been stated by some that for a false statement, under the text of Manu<sup>2</sup> 'If, however, through ignorance, they are punishable with a thousand' a different punishment from two hundred etc has been stated that is intended to state that under the rule of Yajñavalkya that a double punishment occurs only for (acting through) passion, a different punishment is to be sought in case of ignorance etc, and not for demonstrating the punishment of two hundred or the like upon the strength of the text of Manu In the text 'They declare that the wise have prescribed these fines for perjury Manu<sup>3</sup> having declared in the summing up that the text has a reference to offences by witnesses Therefore the punishment under the text of Brhaspati in case of ignorance etc. should be taken as having a reference to councillors

The Chief Judge, or the councillors are to be punished even for having mere conversation in a secluded place with a claimant before (the declaration of) the decision so says Katyayana<sup>4</sup> If while a proceeding is yet undecided a judge holds conversation in secret with a claimant, he becomes certainly punishable and the councillors also and no doubt The Same Author says that if a fault of a councillor is discovered after the decision he is to be compelled to pay a fine Whatever loss has been suffered through the fault of a councillor, should be made good by the councillor at that time but one should not disturb the decision of the matter in dispute between the parties The meaning is that one should not revoke a decision made even by a vitiated councillor, but what loss has been suffered on account of the fault should be caused to be paid

Narada<sup>4</sup> states the faults in a councillor Those members of the court who after having entered it sit mute and meditative and do not speak when the occasion arises are liars all of them 'When the occa

1 Ch V 179-180

2 See Ch VIII 1<sup>st</sup>

3 Ch VIII 122

4 Iotr III 11



sion arises', i.e. a proper one. Also <sup>1</sup> 'That is not a judicial assembly where there are no elders, they are not elders who do not speak (according to) the law. That is not (according to) law, where there is no truth, that is not the truth which is vitiated by fraud' <sup>2</sup>

5 ~ Thus in the Smṛticandrika, being seated at a Court of Law

### Now the Law regarding the Trial

There Kātyāyana "The King attired decently, after having gone to the assembly chamber, composed in mind, and standing or seated with his face turned towards the East, should investigate causes of the litigants along with the elders versed in the three lores and also with ministers knowing the law." As it is impossible to function standing and seated both simultaneously, an option exists. Hence also Manu <sup>3</sup> "There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments he should investigate the causes of the suitors." This option as to standing and sitting is intended as a prohibition against sleeping or moving round. The expression 'raising up the right arm,' is with a view to regulate that in an assembly of the Brāhmanas, the (upper) covering cloth also should be put on as by the right. <sup>4</sup> To that effect also Another Smṛti "In an assembly of the Brāhmanas however, one should raise up his right arm. The expression 'Having put on an unadorned dress and ornaments' is intended as a prohibition against arrogance. So also Prajāpati: 'A King who has been duly anointed, or a Brahmana who is well versed, when seated on the seat of justice should investigate disputes unrelated.' 'Unrelated' i.e. unarrogantly. The use of the word 'unrelated' is also used as indicative of (absence of) jealousy. To that effect also Nārada <sup>5</sup> "Therefore having reached the seat of justice, devoid of (any feeling of) jealousy, he should be even towards all beings, following the vow of Vairasvata." 'Vow of Vairasvata' i.e. the rule followed by Yama <sup>6</sup>. That, moreover, has been pointed out by the Same Author <sup>7</sup> "As Yama regulates at the proper time both the friend and the foe in the same manner should the subjects be restrained by the King, thus

PAGE 21\*

1 Intr III 18 2 उल्ल—any circumvention, deceit 3 Ch VIII 2

4 उपवीतवत्—after the manner of the sacred thread being put on by the right—  
(see सङ्घे वेदितव्यवत्) कसौ वा दक्षिण उपवीत दक्षिण बाहुमुद्रते तद्वदिने यज्ञोपवीत—

5 Intr I 34

6 The God of righteousness who deals out evenhanded justice to all souls

7 —Not found in the published edition—

indeed is the vow of Yama" Yājñavalkya<sup>1</sup> also. "Therefore, like Yama the overlord after discarding likes and dislikes, should conduct himself after the manner of Yama, subduing anger and restraining the organs" The use of the word 'anger' is indicative of 'avarice' also. For, the Same Author<sup>2</sup> also "The king, divested of anger and avarice, should administer justice along with learned Brahmanas, in conformity with the principles of legal science" The expression 'in accordance with the principles of legal science' is intended to exclude the principles of politics, such as those prescribed by Usunā and others, and not however, for excluding the principles of politics in accordance with political science which is included in the science of legal principles, since says Nārada<sup>3</sup> "Without detriment to the principles of legal science or the political science, a king should carry on the investigation of disputes attentively and skilfully"

The *Dharma Śāstras* have been pointed out by Piṭāmaha "The four *Vedas* with the *Angas*, the *Mīmāṃsā*, the *Smṛtis* likewise, these are the *Dharma Śāstras*, the *Purāṇa* and the *Nyāya* philosophy" The *Smṛti* referred to here as a distinct source is the *Artha Śāstra* i. e. *Political Science*, where (the consideration of) *Artha* is given prominence. That, moreover, has been pointed out in *Bhaviṣyaṭ Purāṇa* "The use or non use of the six means according to the importance of the object, the utilisation of the means such as peace and the like others either collectively or separately, the appointment of presiding officers, the uprooting of thorny objects, this *śmṛti* has been called a *dr̥ṣṭārtha*—one having a visible purpose—by the sages, O elder brother of Garuḍa" This is merely an illustration of a *dr̥ṣṭārtha Smṛti*. Thus the meaning is that the science of Polity which treats of peace, war, and the like topics, is a *Smṛti* with a visible purpose. This (rule of) following both the sciences, is only applicable where there is no mutual contradiction between the two. To that effect Nārada<sup>4</sup> : "Where the *Dharma Śāstra* and the *Artha Śāstra* are at variance, one should discard the dictates of *Artha Śāstra* and follow what is stated in the *Dharma Śāstra*" Hence where by the declaration of the success of one, the securing of a friend occurs as stated in the *Artha Śāstra* (but) in opposition to the way of the *Dharma*, there, by discarding the securing of a friend, the success of the other party alone should be declared

1 —Not found in the published edition —

2 Book II 1

3 Intr 37

4 Intr 39

- Where, moreover, there is a contradiction between two *smṛtis*, there states Yājñavalkya <sup>1</sup> "Where two *smṛtis* conflict, principles of equity as determined by popular usage shall prevail" The meaning is that where there is a conflict between two *smṛtis* which have *śūla* for their basis, (there) such a result should be obtained as would work an adjustment of the two on the strength of the rules of logic as to relevancy and non-relevancy as deduced from popular usage In this manner, even when there is no conflict, such dictates of *śāstra* alone should be followed as are supported by the rules of justice, so says Bṛhaspati "By a sole reliance upon the *śāstra*, should not a decision be made, for, a deliberation devoid of reasoning, leads to a frustration of *Dharma* Hence, it comes to be stated in terms that one should decide by a resort to the import of the *śāstra* only, when supported by (rules of) logic It has also been stated by Gautama <sup>2</sup> "For arriving at a judicial decision, rules of logic are a means" 'For arriving at a judicial decision,' i.e. for arriving at a legal decision So also Another *Smṛti*: "One who investigates by means of reasoning, such a one comes to know the *Dharma*, not any other" Therefore one should not decide all at once, so says Piṭāmaha: "Untruths plausibly appear like truths while truths look like untruths, owing to circumstances creating suspicion, therefore it is proper to make an investigation" Nārada<sup>3</sup> also "The firmament has the appearance of a flat surface, and the fire fly looks like fire, yet there is no surface to the sky, nor fire in the fire fly Therefore it is proper to investigate a matter, even though it should have happened before one's own eyes One who delivers his opinion after he<sup>4</sup> has investigated (the matter) will not violate justice One<sup>5</sup> who has not committed theft, comes to be (declared) a thief, while a thief comes to be regarded as a non thief, although he had not committed (any) theft, *māṇḍarīya*<sup>6</sup> was found to be a thief at a trial

PAGE 25\*

1 Book II 21

2 Dh B Ch II 25-26

3 Intr 72

4 The original is अस्य मतप्रकाशं न कर्तव्यं तदिति चेत् Dr Jolly's translation is "one who does not deliver his opinion till he has investigated the matter etc

5 This and the following verses are not to be found in Dr Jolly's Edit They are found in the Trivendram edition of Nārada as Verse 36 on page 9, Verse 35 on page 8

6 *Māṇḍarīya* was wrongly dealt with as a thief There are various versions of this episode in the several Purāṇas According to the *Mārkaṇḍeya* (Ch. 1) and the *Garuḍa* (I 142) he was impaled under a charge of theft The *Pauma Purāṇa* (141, 161) states that he was suspected of a horse theft In the *Skanda Purāṇa* (V. 169-172) ornaments of a woman, and King's wealth (VI 167) are the subjects of theft There is a well known *Rishi* of that name in the Vedic literature.

The divine *dharma* indeed is very subtle, difficult to be seen, difficult to be investigated, hence the course of justice should be conducted by a visible path 'Surface,' i. e. the earth's surface 'At a trial,' i. e. by the particular variety of a decision known as judicial investigation (*Vyavahāra*) 'A visible path' i. e. clear way *Manu* also 'As a hunter traces the 5  
 hair of a (wounded) deer by the drops of blood even so the king shall discover on which side the right lies, by inferences (from the facts) (14) By external signs let him discover the internal disposition of men, by their voice, colour, motions, aspect, eyes, and gestures also' *Yājñavalkya*<sup>2</sup> also "In the case of an assault for which there were no witnesses, the 10  
 investigation should be carried on by means of marks, probabilities, popular report and the like, for fear that the marks might have been counterfeited" The meaning is that in a case of an assault for which there exist no witnesses, one should not decide merely by signs like a wound or the like, because of the possibility of an artificial wound, but that the case 15  
 should be investigated by regard to probabilities etc. So also *Nārada* 'Some one might by making a mark upon himself and through hatred, cause trouble to another, in such a case, the investigation should be by a resort to reasoning, motive, the subject matter, and past relations (between the two)' 'Mark,' such as a seat or the like 'Reasoning,' i. e. inference 20  
 from circumstances 'Motive, logical inference 'The subject,' i. e., the cause, 'Relation,' i. e. context, or previous quarrel 'The investigation i. e. with a view to decide the dispute in accordance with actual happenings Hence also *Yājñavalkya* '✓ After discarding all circum-  
 vention, the king should decide disputes according to the actual facts, for 25  
 even a real claim (based on actual facts), if not properly presented is likely to be lost in a judicial proceeding' The meaning is that there being an absence of certainty about documentary and other evidence, the case set up by the plaintiff or the defendant, although (it may be) true according to actual facts, is lost in the trial, and it is for this reason that he should pursue 30  
 actual facts *Nārada* also "The king having the means of justice, may indeed neglect incorrect statements if made, he should pursue facts alone, since prosperity is based on justice" 'Statements' (*Sūctam*) i. e. declarations made by the plaintiff and the defendant. The meaning is that here one is not to pursue the rambling prattles of an individual, but that as far 35  
 as may be possible one should pursue the real truth When, however, it is

1 Ch VIII 44 25

2 Book II 212

3 Ch I. 176

4 Book II 19

5 Intr 31

not possible entirely to trace the actual facts, then by resort to circumvention even a decision should certainly be made to depend upon witnesses and like other means of evidence. So also has been stated by the Same Author <sup>1</sup> "Because it may be founded either on truth or on error, there-

fore it is said to have two results." By Gautama <sup>2</sup> also has it been stated "In cases of dispute the truth shall be established by means of witnesses."

'By means of witnesses' is intended by implication to include other means of proof. Hence also Manu <sup>3</sup> 'Every day, in accordance with the prin-

ciples of local usages and also the dictates of *Sāstra* all (cases) which have

been set out under the eighteen titles of law" : & the supplement is that the cases set out (under the titles) should one look into these,

in the absence of the dictates of the *Sāstra*, one should decide by means of local usages. To that effect also Katyāyana <sup>4</sup> 'The decision of a king

based on his own opinion (merely) where a text is available, leads away from heaven threatens the ruin of the people, may bring on danger from

the army of an enemy and may reduce (long) life and virility. Therefore a king should decide cases in accordance with the rules prescribed in the *sāstra*,

when, however there is an absence of texts he should carry out according to the local usage of all the people' 'Bring on danger from the army of

the enemy' : & may create danger as emanating from an enemy's army 'Texts (*Vākya*) : & authoritative texts (*sāstram*)

Of local usage also, the Same Author states the characteristics

"In a particular region whatever rule has been in force for a long time, without being opposed to the *Sruti* or the *Smṛti*, that is called the local usage (of the region)'. That moreover, should be caused

to be incorporated in a book, so says the Same Author "Whatever rule of adjustment has been settled in accordance with the agreement

of the (people of the) region, should always be preserved in writing sealed with the royal signet should be preserved with effort like

*Sāstra*, and one should decide after a proper appreciation of the same' The expression 'the same' is intended to indicate the rule of an

adjustment approved of a family and the like also. Hence also Pīlambā : "Whatever the best practice, whether in accordance with law, or not

according to law, that is declared to be usage by reason of its being practised by the families &c and the country. Transactions between the inhabit-

ants of a village colony, town, guild, caravan, and an army should be

decided by regard to usage, so says *Bṛhaspati*. This has a reference to disputes mutually among the inhabitants of a village etc. In regard, however, to a dispute between these and others, a decision should be reached according to the dictates of the *Sāstra* alone. To that effect, moreover, the Same Author 'In the case of the inhabitants of a country, city, colony, town or village, by their own conventions, (and) by regard to the *Dharma Śāstra*, in disputes of these with others

Where however, these means (of proof) do not exist, there the decision shall be according to the order of the King, so says the Same Author. 'Where no document exists, nor possession nor also witnesses, nor is also a resort to an ordeal possible, there the King is the authority. Those disputes of a doubtful character which cannot be determined in the case of these, the King is the authority since he is the master of all

Here, moreover *Harita* 'That decision which has been declared according to the dictates of the *Dharma Śāstra* which is characterised by a conformity to the usage of the good men, and which, moreover is uncontaminated by circumvention such a one is a legal decision. 'Legal (*Dharmikah*), i.e. not swerving from (*dharma*) legal principles

For a King investigating in this manner *Nārada*<sup>1</sup> states the fruit. For a King who self-restrained decides disputes according to law seven good qualities become manifest like the seven flames from fire. The meaning is that like the seven flames of fire the seven good qualities arise

The good qualities states the Same Author<sup>2</sup>. Religious merit, worldly gain, fame, respect among men, favourableness, reverence on the part of his subjects and an everlasting residence in paradise. Respect i.e. esteem among men. Favourableness (*Upagraha*)<sup>3</sup> i.e. a place of resort. 'By restraining the sinners and by protecting the good Kings are always purified just as the twice-born (i.e.) by sacrifices. *Yajña valkyā*<sup>4</sup> also. He the King who punishes the punishable properly and executes those deserving capital punishment shall be deemed to have performed many sacrifices consummated with rich gifts. Thus bearing in mind equal to the sacrificial separately should he personally attend to the judicial proceedings every day in the company of Councillors. 'Every day—this expression has a reference to days other than the fourteenth and the like others. For to that effect *Samvarta* 'The fourteenth, the new Moon

1 Intr 32

2 Intr 33

3 Dr Jolly translates as conquest

4 Achāra 359-360

day, the Full Moon day, likewise the eighth—on these days one should never hold judicial investigations at all. On days other than these even before the midday only. To that effect *Brhaspati* ✓ In the forepart of the day, having taken his seat in it accompanied by aged ministers and dependents,

5 be (the King) should interpret the meaning of ancient

PAGE 27\* Pur *na*, *Dharmasāstra*, and listen likewise, and should carefully consider administrative matters surrounded

by three Councillors. In it, *i e* in the assembly room with the characteristics as described. In the forenoon also, after the four *ghaṭikās* only

10 as that period is intended for the fire sacrifices. Hence also *Kaṭyāyana*.

"That portion of three parts which occurs after the first eight parts of a day such a period is considered to be the best in the *Sāstras* for judicial investigations. In this portion of three periods one should always investigate. So also *Pitāmaha*. The writer, the accountant the *Sāstra* the

15 Warden, the Councillors gold, fire and water, thus of eight parts is declared to be the means, by resorting to it one should always inquire into a

matter (in company) with the citizens. The use of the word citizens is intended as indicative of all people included in one's kingdom. To that

effect also *Manu* ✓ 'Being seated there, he shall give satisfaction to all

20 the subjects (as approach him) and dismiss them. 'There, *i e* in the judicial assembly.

In regard to the subjects also one should not decide after himself creating disputes. To that effect also is *Pitāmaha*. But he

25 should not investigate after starting it himself or through his man. By the expression his man the prohibition here is in regard to an affair

started by a man under the orders of the king, and not for that started by any man. If it were so there would a prohibition of matters

started by a party or a person connected with him and so the investigation itself of disputes would come to be prohibited. Hence also the man

30 has been particularly characterised by *Manu* ✓ 'Neither the king nor any servant of his shall themselves cause a lawsuit to be started. The

supplement is, *i e* of men between whom there is no dispute. To that effect also *Narada* : But a king either under pressure or through greed

for wealth, should never cause to be started suits by men between whom

35 there was no dispute. Suits *i e* disputes. So also, even a dispute although started by the subjects but about which a complaint was not filed by the party or some one connected with him, but somehow having

come to know, he should not admit. So says Mann<sup>1</sup>. "Nor should he swallow somehow that which has not been brought by some other persons" 'Not brought': i.e. not made the subject of a complaint. 'Acyhow, i.e. out of prejudice or the like. Hence also Pitāmaha "Not through prejudice, nor through avarice, nor through anger, should a king clutch at disputes not advanced by others, nor also even of his own will". 'By others': i.e. by the complainants. Here the Same Author states an exception "Circumventions, as also offences, and those matters likewise which are for the king (to investigate), these, however, a king should take up himself without a complainant".

There the Same Author details the (cases of) circumventions (*Chhalāni*)<sup>2</sup> "A way-lyer, one threatening with the band, one trespassing over a wall, the destroyer of a drinking fount, as also of a dwelling place the supplier of destructive weapons, and one who discloses the royal secrets, one who unauthorisedly enters the harem, a dwelling house, a treasury room, the kitchen as also one who stares at a meal. One intent on throwing dung, urine phlegm, and wind, or sitting on the hams in a fixed posture in the presence of the king, one obstructing a front seat, also one who enters putting on a dress far in excess of the king's, one who enters by a wrong way, as also one who enters at a wrong time. Using the bed, the seat, and the sandals, seating oneself upon the bed and the seat and when the king is sleeping nearby one who tattles about, one who resorts to what is disliked by the king, one taking a seat without being offered, as also one who puts on clothes, ornaments, and gold also. Taking by oneself, one who takes a beetle and

1 Ch VIII 43 (2) न च प्रविनमयेन ग्रसेतायं कश्चन—Medhatithi gives two interpretations of ग्रसेन (1) निमित्त—swallows & hush up or as he puts it न वेत्तेन (2) Should not accept money other than that under dispute, cp also Katyayana cited in Vyavahara Madhava and in the Commentary of Raghavananda. Medhatithi states an exception viz a theft or a similar act affecting the public. In the मनुस्मृति the reading is न च प्रविनमयेन and all the Commentators have followed this reading. The Author of the Smṛtichandrika however, reads अग्रविन. According to the above readings, it would mean that complaints lodged by others should not be pushed up. The reading in the Smṛtichandrika would mean that unless a complaint is made, a king should not clutch at a dispute. Here the literal meaning in the *Dhātupāṭha* (ग्रस प्रवेने) would be appropriate. The text of Pitāmaha cited further on has the same sense.

2 चलानि—This word चल is used in legal treatises in several senses. Pre-eminently, it is used to indicate 'error fraud, or circumvention. See Nārada Intr I 31 also Yajñ II 19. Here, it appears to be used in the sense of offences within the 'special originating jurisdiction of the King 'Excesses'.



eats it One who speaks without being authorised, as also one who makes complaints against the king One putting on one cloth likewise one who has not eaten one who has tattooed his body in various colours

- 5 PAGE 28\* as also one who wears a garland and one who blows out the upper garment One who enshrouds his head one who is intent on picking out holes One who is intensively attached, one whose hair are loose, also one who pulls out the ears and the eyes, as also one who grinds his teeth, who cleans the ears and the nose—these fifty kinds of actions in the presence of the king are  
10 regarded as circumventions (*Chh dām*) Sleeping in the bed of a king as also seating on his seat putting on his sandals are the three excesses Of clothes and ornaments also &c' i e one who takes (these) without having given The twice mention of the expression 'With hairs loose, is intended to include a burhel also The rest is clear in meaning

- 15 Narada<sup>1</sup> states the offences "The (habitual) transgressors of commands, murder of a woman mixture of the *varnas*, intercourse with another's wife theft, pregnancy also without a husband, abuse, speech which should be avoided, assault also causing abortion of a foetus These ten (kinds of offences) also The suggestion is that these the king  
20 should investigate even without any complainant Likewise also Samvarta<sup>2</sup> Arrest, obstruction in the way, and where there is pregnancy without a husband, by himself should the king investigate even without a complainant Of one who has visible immense wealth, but the source is not visible anywhere, the king himself should investigate, even without a complainant  
25 Interrupting a meeting cutting up of trees, destruction of crops also, the king should himself investigate even without a complainant A maiden lifter, a sinner degraded brāhmana engaging in other's property disputes, the king should himself try In the matter of the tax consisting of the one sixth that which cuts open a path, apprehension of theft from one's kingdom, violation of other's wives the destroyer of cows and brāhmanas as also that which is destructive of the crops—these  
30 ten (kinds of) offences, the king himself should investigate The meaning is that there i e in arrest etc the ten (kinds of) offences the king should investigate *suo motu* Here, the use of the expression 'obstruction in the way is intended as indicative of subventions, of the inclusion of those  
35 enumerated in the ten (kinds of) offences is intended as indicative of those The expression 'destructive of crops' however is indicative of topics

1 Not found in the published edition of Narada.

All these heads, moreover, have been pointed out by *Pitāmaha* :  
 "The eradicator, the crop-destroyer likewise, the incendiary also, the violator of a maiden, one who conceals a deposit ; one who breaks up the thorns upon an embankment, as also one who trespasses upon a field ; the destroyer of a pleasure-garden, likewise the poisoner, one inciting hatred against the king, likewise one who breaks open his seal, as also one who divulges his secrets, and one who sets free a prisoner ; one who accepts possession and fine, a donation, and also an increase, one who conceals the drum proclamation, ownerless property, as also property appropriated by the king ; as also what brings about the destruction of a limb ; these twenty-two topics, the learned declare as cognizable by the king." In this manner, acts of circumvention and the like, should be investigated by the king after having come to know of these directly or through an informer (*स्तोभक stobhaka*), or an intelligence officer (*सूचक Sūchaka*). It should thus be understood that in regard to other topics, after having cognition of these from the litigants or persons connected with them, and not otherwise.

*Kātyāyana*<sup>1</sup> states the characteristics of a *Stobhaka* (private informer), and a *Sūchaka* (Intelligence officer) "One who with the sole motive for gain, and instigated by lucre, first gives information of what is censured by the *S'āstra*, such a one is called a *Stobhaka*. One who has been appointed by the king himself for detecting the faults of others, and who after coming to know, reports to the king, such a one is called the *Sūchaka* 'With the sole motive for gain' (*Arthamukhyah*) i. e. who is prominently intent on making money.

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In this connection *Hārīta* : "After knowing the *S'āstras*, the laws of the *Varnas*, as also of the common people his subjects, and also the characteristics of *Vyavahāra*, the king should act according to all that". The *Prakṛis*<sup>2</sup> —the common people have been pointed out by *Pitāmaha* :

1 M M Kane in his compilation of *Kātyāyana* reads राजा प्रत्यक्षित् (P 8) and translates 'without being urged by the King' This reading is not given either in the Mysore edition, or in 'Collections'

2 प्रहृति—This word is used in various senses in the Sanskrit literature. प्रहृतिर्गणसम्ये यादृशव्यादिसमावयो : येनो लिङ्गो वीरवर्मे" (मेदिनी) In the present case it is used to indicate citizens outside the three varnas, as has been made clear by *Pitāmaha* in his text quoted above प्रहृता इति कार्यं यथा, प्रत्यक्षित् वा । The term *proletariat* comes very near the idea underlying this word प्रहृति characterised by *Pitāmaha* as वर्जितमाश्रयार्ता व सर्वदा दुःखं विधा । The word *proletariat* has been pointed in dictionaries as a term used by modern Socialists and Communists for the whole body of wage-earning workers regarded as exploited by capitalist employers and the 'bourgeoisie'. The word also is used in the sense of basic varieties सप्त प्रहृतयः See Yājñi Āchāra 353,

“The washerman<sup>1</sup>, the hyde-maker, an actor, the basket-maker also, a fisherman should also be noticed, the *Mlechhas* and the *Bhillas* likewise also, the weavers<sup>2</sup> (a), the *Sthirakas* (b), the hunters (c), The *Hastas* (d), The *Lāl hadrus* (e), the *Ghatikas* (f), the *Kosadikas* (g), the *Ābhurapadas* (h)  
 5 The *Mātangas* (i), the *Andopas* (j), and the *Gopakas* (k) These eighteen are the *prakrits* (प्रकृति) declared by the wise, but they are always placed outside the *Varnas* and the *Āśramas* (orders) ’

The Characteristics<sup>3</sup> of *Vyavahāra*, moreover, have already been described in the first Chapter *Manu*<sup>4</sup> also “After having properly  
 10 examined the caste rules laws of the people of the country, of guilds and family customs also, and the fixed laws, one should settle the peculiar laws of each”. ‘Rules of the guilds’, i.e. of the grocers, artisans &c in their own respective groups, such as, ‘this to be sold on this day’, ‘this to be sold by this guild only’, and the like ‘In this family, on the fifth day,  
 15 or in the fifth year (the ceremony of) the piercing of the ear should be performed’, such and like others are the family customs ‘Should settle’ i.e. should propound And one not performing in non distress should be compelled by force to perform To that effect also *Yājñavalkya*<sup>5</sup> ‘The families, the people<sup>6</sup> also, the *S’renis*, and *Ganas*, and *Jānapadas* also, when deviating from their laws, the King should chastise (them), and  
 20 establish them in the right path’.

*Narada*<sup>7</sup> ‘Placing before him the *Dharmasāstra*, and adhering to the opinion of the Chief Judge, he should decide suits in proper order—with a calm and concentrated attention” ‘In proper order, i.e. the  
 25 meaning is, in the order of hearing the statement of the plaintiff and the like To that effect also the Same Author’ “The statement of the cases should be first attended to, the title of the law after that, the deliberation and the decision also, thus investigation should be of four

1 रजक The *Mitākshara* interprets this term as रज्जुगर्ज रजक the dyer

2 Many of the names stated in this verse are not found in the reference books

(a) वेवर्—The weaver from वेवन् a loom (वेवन् वावद्वं *Amara* II 10 28);  
 (b) स्थिर (c) व्याध (d) हल-हल करे करिके सप्तकोटिकोपवि च कसे केशापरो व्राते । मैदिनी  
 (e) लासद्र (f) घटिक (g) कोसेदिक कुलदिक —(कसीद) *Ansrer* (h) आभीरवद्—आभीर,  
 (अहीर) (i) मातंग—the lowest of the depressed classes (j) अदोप (k) गोपक

3 व्यवहारसूत्र—in the texts of *Hārta* &c (see pages 2-3 above)

4 Ch VIII 43

5 *Achra* 361

6 प्रहृती In the *Yājñavalkya Smṛti*, the reading is जाती Castes

7 *Intr* I 35,

8 *Intr* I 36,

parts" *Āgama* <sup>1</sup>, the hearing of the statement of the plaintiff, that should be done first, then that should be placed under a title of law, such as recovery of debt or the like, then the consideration of the evidence in support of the plaint and the answer, thereafter the determination of the success : *e* the result, thus has been expounded in the Commentary thereon *There Manu* <sup>2</sup> "A King who desires his own welfare, must always forgive litigants, infants, aged and sickmen, who inweigh against him He who, tolerates when abused by persons in affliction, will by reason of that be exalted in heaven, he, however, out of ( the pride of ) his exalted position does not forbear, goes to hell on that account" 5 10

Thus in the *Smṛtibhāṇḍikā* the Rules of Investigations

### Now the Law of Arrest

There *Nārada* <sup>3</sup> "One who does not attend a cause which is to be tried, and who disregards his statement, the plaintiff in a cause may place such a one under arrest until legal summons is issued Even in (a case involving) a doubtful point, one who desires a decision of a dispute may put under restraint under the king's order one who is indifferent for a decision and disregards the challenge of the plaintiff that he should proceed for a decision, until the time of the summons in the suit 15 20

The arrest, moreover, is of four kinds, so says the Same Author <sup>4</sup> "Confinement to a place, arrest for a limited time, restrictions regarding travelling and prohibition against specific acts likewise, this is the fourfold division of arrest, one subjected to an arrest must not transgress it" 'Confinement to a place', : *e* 'restraining with an injunction that one should not move away from a house temple, or the like place 'Arrest for a limited time, : *e* *g.* You should show yourself before the fifth, if not, you will have transgressed the King's Commands, in this or the like form 'Restrictions regarding travelling, : *e* prohibiting a journey 'Prohibition against specific acts', such as spreading out a merchandise, not however for looking at it As says *Kātyāyana* "One, however who by restraining the organs by causing obstruction to speech, 25 30

1 In the commentary on *Nārada Āgama* has been explained as 'connection' : *e* the relation of the case in hand to the entire system of law (See S B E XXXIII p 14 note on 36 ).

2 Ch VIII 312, 313

3 Intr Ch. I 47

4 Intr Ch. I 48

- breathing, and the like to one who does not<sup>1</sup> deserve to be restrained such a one should be punished but not the transgressor. The meaning is that as restraining the organs would be difficult, one does not incur the charge of transgressing the king's command.
- 5 Hence also there is no fault in regard to crossing a river or upon a like difficulty, so says Nārada<sup>2</sup> 'One arrested while crossing a river, or in a forest, or in a bad country, or during a great calamity, or while in similar predicaments, commits no fault by transgressing his arrest' 'Crossing a river' is river-crossing, 'forest,' an impassable road, a country of the
- 10 wicked thieves, tigers and the like is 'a bad country' 'A calamity': *c* being surrounded by an enemy's army or the like. Under these and similar circumstances a transgression of an order even is no offence. Elsewhere, however, Pitāmaha states an offence. One by whom a king's command has been transgressed, and in particular when it can be performed,
- 15 by such a one happens to be committed treason against the Government with its<sup>3</sup> seven departments'. Where, however, there is an offence of the transgression of a command, there Vyāsa<sup>4</sup> states a punishment. 'One who deserves an arrest incurs punishment upon a transgression. Nārada<sup>5</sup> also "If one arrested at a proper time breaks his arrest he shall be punished. One who arrests improperly is liable to be punished."
- 20 Arresting improperly, *i e* the meaning is, arresting one who ought not to be arrested. To that effect also Vyāsa "One however, who arrests those who ought not to be arrested, should be punished by the king, this is the established rule."
- 25 Kātyāyana states those who ought not to be arrested. "Those who have climbed up trees and mountains, those who are seated on elephants horses chariots or boats, those who are placed in difficulties, all these must not be arrested by those desiring to establish their claim. Those afflicted with a disease, and those who are under a calamity, and likewise those
- 30 who are engaged in offering a sacrifice, as also those who have not come out of a proceeding must not be arrested and the intoxicated, the lunatics, and the idiots likewise also. Not an agriculturist at the sowing season, nor an armyman at the conscription time, is also one who has gone out after taking a vow, nor one who is under a time stipulation in the interval

1 अनासथ इति a better reading स्वप्नाया जनाद्यु कोशो दण्डस्तथैव च विराजयता प्रकृतयो राज्यं सन्नाहमुच्यते

2 Intr I 49

3 सप्तौग राज्यं See Yajñ Acharya 353

4 This same text occurs in Kātyāyana also

5 Intr I 51.

An agriculturist when ready to reap the crop, on the approach of the rainy season likewise, from the commencement to the collection, during that period one must not proceed against. The import is that the period is not proper for an arrest. Brhaspati also 'One who has made preparations for a marriage the sick one afflicted with gun a lunatic, an infant, the intoxicated, the aged, one who is already under a charge, one ready for the king's service and one under a vow. When a

PAGE 31\* conflict is imminent, an armyman, or a husbandman when engaged in collection is also those placed in a

difficulty, must not be arrested, and a woman with a husband likewise. 'Conflict' is a battle, Narada also "One desirous of marriage, one oppressed by a disease one about to offer a sacrifice one immersed in difficulty, likewise one who is (already) accused by another, as also one ready for the king's service, cowherds at the cattle path, cultivators at the commencement of the crop season, artisans also for that period, the armbearers also during the war one who has not reached (the age of) capacity, the messenger, one who is about to make a donation, one under a vow, as also those immersed in difficulty must not be arrested, nor must the king summon these. Desirous of marriage', is about to marry, 'the cattle path', is the forest border, one who has not reached (the age of) capacity is who has not completed his sixteenth year, 'immersed in difficulty' is those deprived of everything by thieves and the like Vyâsa also 'The diseased one about to offer a sacrifice, a lunatic, one desirous of (performing) a religious duty, one under a difficulty, one under a vow one about to make a donation, must not be proceeded against, nor arrested, nor must (the king) summon him. Here Brhaspati "A tradesman after he has sold off his merchandise, after the crop is produced, the husbandman, as also those prepared for a sacrifice, should be compelled to pay after they have accomplished their purpose'

Thus in the Smṛticandrikâ the Law of Arrest

### Now the commencement of the Trial

There Manu<sup>2</sup> After having placed himself on the seat of justice, with his body duly covered, and with concentrated attention having bowed to the guardian<sup>3</sup> deities of the regions', the substance is that at a

1 Intr I 52 53 54

2 Ch VII 23

3 लोकपाल —commencing with India and the rest these are eight

making false statements in judicial proceedings" Kātyāyana also: "Slaves, servants, pupils appointed persons, and *bāndhavas* likewise, of the plaintiff shall not be liable to punishment; one, however, who is any other than these shall deserve punishment."

Thus, even the person lodging the complaint, when speaking unmannerly, shall be punished; so says Utañāḥ: "Carrying a weapon and without an upper garment, with hair loosened, equipped with the means, and speaking with the left hand, wearing a garland, shall incur punishment" The import is that therefore never should one in such a condition address.

Thereafter, his statement, the writer should write down on the board or the like. To that effect also Nārada<sup>1</sup> "When, angered by passion<sup>2</sup> or the like, he utters something in the evidence, all that (statement) of the plaintiff, he should at once<sup>3</sup> write down on a board or the like". 'In the evidence', i. e. in the presence of the king or the like. That statement, if it be not unworthy of consideration, as e. g. 'Money was advanced by me in another birth, and he is not returning that, or such like, then for bringing over the defendant, the sending of a sealed packet or the like should be directed. To that effect also Kātyāyana "Thus interrogated, what he speaks (as his grievance), he (i. e. the king) should consider along with the Counsellors and the Brāhmanas, and if the complaint be proper or according to law, (an order bearing) the seal, should be given to him, or a messenger be ordered". 'To him', i. e. to the informant; 'messenger', i. e. the *Sādhyapāla*, 'according to law', i. e. in a proper form, the meaning is that (it is) sufficient for issuing a summons to the person complained against. To that effect also Brhaspati. "One against whom a person makes an accusation on facts or on suspicion, such a one alone should the King cause to be brought, either by (sending) a sealed order, or a messenger" The import is that such a one alone has the right to give a reply. Hence also Kātyāyana "The right is of one who has been complained against, and not of any other unconnected". The

<sup>1</sup> Intr I 18

<sup>2</sup> *Asahāya* adds an interesting note. When a litigant under the influence of passion &c blurts out something which happens to be a very important piece of evidence, he should say 'amen' (*Oṃ*), and put it down in his note.

<sup>3</sup> ओमिदि वच्न्—saying 'alright', 'amen', cp ओमिदुत्पत्तामवाप्ता *Mātaṃśādhava* VI<sup>1</sup>

<sup>4</sup> This word has been explained before by a quotation from *Vyāsa* (See p 30 ll 1-4)

meaning is that, for 'any other', not complained against in that dispute by reason of an absence of connection, there is no right of giving a reply. Hence, for any other there is no right of joining as an opponent, but for himself (only), but by the person complained against taking up the (task of) giving a reply or by the Chief Judge making it out for facilitating his own function, or by the disputant of his own will accepting him as a respondent and not otherwise, so says the Same Author. "Or even a stranger is permitted, if he is put forward by the person complained against, a stranger who has been offered by the disputant to the Court Officer, such a one may be regarded as a respondent, as also one who has been admitted by the plaintiff himself." The meaning is

PAGE 33\* this Even a stranger, i.e. one unconnected with the dispute, (but) deputed to oppose, and is authorised as a defendant by the person complained against, is regarded as a (proper) respondent by Manu and the rest. Likewise, another, a second (variety of) respondent should be regarded as one, who (though) a stranger i.e. not connected with the matter in dispute, had been deputed to the Chief Judge by the person complained against, or one who has been admitted i.e. accepted as opponent by the plaintiff

Moreover, this right of an unauthorised person to act as opponent should be understood to be in the case of persons who are incapacitated by a disease or the like, in such a case the person who has the right not being competent to plead in person himself. Hence also Brhaspati 'For the immature, the idiot, the lunatic, the aged, a woman, an infant, one afflicted with a disease, a kindred may declare the plaint, or any other person duly appointed'. Hence also, a prohibition for a summons against these has been stated in the Smritis by Harita and others. "The King should not cause to be summoned a person who is unable, a minor, the old, one placed in difficulty, one engaged in (religious) duties, nor a person who would suffer a great loss if he were summoned, a person afflicted with pain, a person engrossed in the king's service, or in celebrating festivals; the intoxicated, persons possessed by evil spirits the idiots or the insane, the aggrieved, or persons who are dependents". 'Unable', i.e. afflicted with a disease, 'placed in difficulty' i.e. against whom a calamity has arisen; 'Engaged in duties', i.e. who is engrossed in the performance of the ordinary and special duties, one whose coming would cause a great loss is 'one who would suffer great loss'; pain is the sorrow caused by the separation from a friend, one who has that is 'one afflicted with pain'; 'the intoxicated',



one whose intellect has fallen on account of *dhatura* or a like intoxicating drug, *unmatta*, a person troubled by evil spirits, billiousness or the like cause, 'insane', *i e* inattentive in all matters, 'afflicted with pain, caused by poison etc. The use of the word *dependent* is indicative by implication, also of women who are not independent. Hence also 5  
*Katyāyana* 'The king must not summon persons who are intent upon a religious performance for prosperity, the diseased and also the idiots, those not at ease, the intoxicated the lunatics those suffering from pain and the women' Here, the women contemplated are those who are dependent upon others. Since says the Same Author "Not a young and debased woman nor one born in a family, a woman recently delivered, a maiden of the highest of all the *varnas* these are declared to be dependents on their castes. A summons is allowed against women upon whom their families are dependent, profligate women, as also those who are prostitutes, those who are of a low family, as also those who have become degraded" 10  
 'Debased,' *i e* overpowered by passion, 'young' is qualitative of the same also, 'born in a family' *i e* born in a high family of the highest of *varnas*, 'i e' of a *varna* higher than that of the plaintiff, those' *i e* those mentioned before these five dependent on their caste are under their lead not others. Therefore, the meaning is that the summoning 20  
 of those women upon whom their families are dependent is permitted by *Manu* and the rest

*Narada*<sup>1</sup> also prohibits the summoning of some 'One about to marry one oppressed by a disease, one about to offer a sacrifice one afflicted by a calamity, as also one (already) accused by another, and one engaged 25  
 in the king's service cowherds engaged in tending cattle, cultivators in the act of sowing the crops artisans also during the time and armbearers also during battle. Also one who has not yet reached the age of discretion a messenger one about to make donations one (who is engaged) under a vow those also who are placed in difficulty—must not be 30  
 arrested, nor should the king issue a summons to them. About to marry, *i e* just prepared for marriage *Vyasa* also 'One diseased, about to offer a sacrifice, the intoxicated, one intent on a religious performance one placed in difficulty, one observing a vow one about to make donations must not be accused, nor be placed under arrest, nor should the 35  
 king summon him. Therefore it is established that the rule regarding a

deputy is in the case of those only who are under an incapacity and the like

When, however, no result can be obtained from a representative deputed by the incapax or the like, then a summons should be issued against the incapax also. To that effect also Hārta: 'Taking into consideration the time and the place, as also the importance or otherwise of the cause, the king may cause even the incapax etc. to be summoned, and brought comfortably by stages.'

When, however, the accusation is in regard to a serious matter, then a summons is necessary against the accused himself

PAGE 34\* only, as in such a case a deputy has not been permitted. For Kātyāyana also: "In the case of a

Brahminicide, surt-drinking, theft, adultery with the preceptor's wife, and other asabhya<sup>1</sup> disputes a representative cannot be offered. The

Same Author also states the asabhya causes: "In manslaughter, theft, outraging another's wife, eating the uneatable, abduction and violation of a maiden, violence, counterfeiting, treason against the king likewise, a deputy (or a) representative cannot be admitted for a Complainant or the Respondent also." A deputy of the complainant or of the Respondent is the 'Representative'

Such a one must not be admitted in serious matters, such as these and the like others. Hence also Hārta: "Even after having come to know of the accusation, those who resort to the forest, such as the hermit and the like, even these the king should summon in serious causes, (but) without creating anger." Here by stating 'without creating anger,' the

Author intends to convey that in the case of ordinary persons, a summons may be made even with sharp words. Moreover, this has been made clear by Vyāsa: "One who causes injury, or does not proffer, through dishonesty, what is due to be given to one making a demand, such a one must be dragged under the king's order." One, however, who does not come up

even by the king's order, for such a one Brhaspati states the punishment: "One, however, who when summoned, does not come up, out of pride relying upon the strength of his kindred, for such a one a penalty should be prescribed proportionate to the accusation". Kātyāyana also: "One,

1 असभ्यतेऽपि, another reading is अतिवृत्तेऽपि (Kane p. 15). The counts enumerated here are regarded as *Maheśvāśilas*. See Xaji III 427. The reading in अतिवृत्तेऽपि and अतिवृत्तेऽपि is maintained. The reading असभ्यतेऽपि as will be seen in the next line. From the enumeration of these as given in the next line असभ्य evidently is meant to indicate those causes which cannot wait for an assembly, not fit for an assembly of the *ṣaṣṭha*.

who when summoned being able treats with contumely the king's Command, for such a one the king should administer a punishment according to the procedure observed in the rules, in a petty matter fifty for one of a middling quality, two hundred and more, and in heavy cases five hundred and more. The quantity here is of *Panas*, as the Same Author has stated. 'Whatever penalty has been deliberately fixed for a particular offence its equivalent should be taken in *panas* should be understood from what will be stated further on.' By the use of the expression 'being able', (it is intended) that in the case of adversity etc. no penalty should be administered. But after it has passed off a fresh summons (should be issued). Hence also *Vyāsa* 'When a country is infected by a foreign army, or is in a (state of) famine, or when it is troubled by disease, one should issue a fresh summons, one must not administer a penalty. *Hārta* also "If one who is accused has in reality a king's (commission) or divine (duty) to perform, and he goes to his place, or an interior place, for so doing, however, he does not incur blame." 'In reality', is as a positive fact. If it be not in reality, then he should be punished and afterwards compelled to proceed with the trial. To that effect also the Same Author. 'He should, however, be duly placed by effort otherwise he will incur penalty and after having punished, there after again he should be compelled to proceed before the king's justices'.

In this manner by whichever means whatsoever produced, the accused person should be placed in front of the complainant in the presence of the court or any other desired place. To that effect *Pitamaha*. 'The respondent then should be placed before the court by the plaintiff, at the contemplated or any other place, otherwise he is not reliable. The meaning is that he should be placed at such a spot where the concealment of the offending marks would be impossible. Thereafter when questioned by the king the accused should narrate the facts as are favourable to him as a guest for a fact is not possible from the mere information of the complainant. Hence also in the rule as to the quest after facts has been stated by *Manu*. "By their voice, (their) colour, (their) motions, their aspect their eyes and their speech also," in a dispute involving (an element of) deceit also before the statement of the first informant is taken down in writing for the purpose of the (correct) appreciation of the informant about the fraud,

while the person complained against thereafter, at the conclusion of these two, the councillors, and the chief judge after that 'Should address first,' i.e. should make the affirmation To that effect also Narada<sup>1</sup> ✓ "A royal edict a (private) document, a written title a grant, a pledge a (promise in) writing, a sale or a purchase, one who brings an action in regard to any of these before the king, for such a one should be declared to have the right to begin, by those conversant with the laws' The meaning is that in all cases, the complainant has always the right to expound his affirmation Here the Same Author<sup>2</sup> "One who has suffered greater injury or whose subject matter is (of) greater (importance), to him should be given the plaintiff's right, not (merely) one who first complains Plaintiff's right,' i.e. the right to begin To that effect also Katyayana<sup>3</sup> ✓ "One, who has suffered greater injury or whose subject matter is (of) greater importance for such a one shall have the right to begin, and not for one who first complains" The meaning is that in a matter of such a character the inversion of the plaintiff's and defendant's position should be made by the investigators Where both are mutually placed in the position of plaintiffs at the same time by reason of a difference in the object to be accomplished, in such a case the plaintiff's position should be given to one (who is) of a higher caste or to one whose injury was greater To that effect Brhaspati Where the plaintiff and the defendant have approached the court, each claiming to be (heard) first, the inquiry should be taken in the order of priority of *varnas*, or by a consideration of the injury Even on a similarity of the *varna* (the trial) should be taken by regard to the injury

When pairs of several plaintiffs appear simultaneously, Manu<sup>4</sup> states the order of investigation knowing what is expedient or inexpedient and what is pure justice or injustice one should examine the causes of suitors according to the order of the *varnas*

Thus in the *Smṛticandrika*, the commencement of a trial

PAGE 36\* Now the part relating to the Plaintiff (Pratyāpadah)

There Brhaspati When he has appeared, one should cause the case of the plaintiff to be put to writing' The meaning is that when the

1 Intr II 38 S B E Yol XXXIII p 33

2 श्रावण—See Yaju I 319 referred to further on under the Title of Documents

3 Not found in Narada The Katyayana Smṛti has a similar rule See further

4 Ch VIII 24

- defendant is near, the plaint should be caused to be written. To that effect also Yajñavalkya <sup>1</sup> "In the presence of the defendant should be reduced to writing whatever is alleged by the plaintiff" The expression 'whatever is alleged by the plaintiff is used to demonstrate that the point which has been mentioned as to be established, that alone should be written down and not any other point. In short, not that whatever has been stated, all that even should be written, since the Same Author says that even of things not stated, such as the year and such other particulars, should be reduced to writing' 'Marked with the year, the month, the fortnight the day, the name, the caste, and the like' Year, *i.e.* the annual period that moreover to be written down should be of the time when the money was advanced, the month and the like also should be of the same period. The particulars included in the expression 'and such like others' have been pointed out by Kātyāyana 'Having entered the period and the year also the month the fortnight, the day likewise the time the particular place, the subject, the spot, the caste the form (of the body) the age, the dimensions of the object to be secured, the quantity, his own name likewise, the names of the kings in order, the dwelling place, the name of the thing to be secured, the names of the ancestors in due order, the injury, the person who took, and the donor, the reasons for forbearance and other details the plaint should be filed' 'Period,' *i.e.* the time when the money was advanced and the like, indicated by the king (ruling) at that time, 'the year,' (*varsham*) such as देवर्षि etc. 'The time' *Velā*, such as identified by the act of possession etc. 'the particular place,' *i.e.* the particular of the object or the action to be secured, 'spot' such as the country between two rivers 'The site of the subject of dispute, such as of a house, village etc. 'Subject matter,' (*vi hayah*), such as the intervening <sup>2</sup> region or the like. Form: *i.e.* particular constitution of the body, 'age' such as youth etc. 'Dimensions' *i.e.* measurement, such as a rod, a balance, a *prastha* <sup>3</sup> etc. Of self, *i.e.* of the plaintiff, of the kings, and of those in possession of the land etc. for the (particular) period and the like, 'residence, *i.e.* place of residence such as a house a cowpen etc., 'ancestors, *i.e.* the

1 Book II 6

2 अर्जोद्यादिदेश —अर्जोदि is the region between two rivers and watered by these. The region between the two great rivers the Gangea and the Jumna has been particularly known as अर्जोदि

3 प्रस्थ is a measure of land. See Amara II IX 89

आह्वयद्रोणी स्वादि पादो नैक्ययः । कुडव प्रस्थ इत्याद्या परिमाणार्थकाः दृश्यन् ।

father etc of the plaintiff and the defendant, 'injury,' either for the surety, caused by the creditor 'The person who took, i.e. the (original) person who started the acceptance of the donation etc 'The donor,' i.e. the giver, 'the reasons for forbearance' i.e. the causes for bearing with the enjoyment of one's property etc by another, 'others, i.e. in addition to those pointed out, such as, the interest, the source etc 5

To that effect also Brhaspati 'Faultless, together with an affirmation, containing the means of proof and the source (of title), setting out the amount of money, one should write the injury and the motive for forbearance' Likewise the Same Author<sup>2</sup> states other characteristics also "Briefly worded, pregnant in meaning, absolutely unambiguous and not confused, containing the statement of the opponent's acts, and asking for a preventive order against the opponent, having carefully examined all these characteristics and well settled, a plaint so formulated should be accepted other than this, however is (only) a semblance of a plaint' 10 15

The Sangraha-kāra<sup>3</sup> also That is termed a plaint or complaint, which is presented or made to the king and which contains the cause of action (*artha*), which is in accordance with the law, which is wholly complete, and is free from confusion which contains the point at issue which is 20 couched in significant language and which is consistent with the claim made (out), which is intelligible, not inconsistent certain capable of proof, (which is) concise yet bringing out the whole cause of action not impossible in regard to place or time; which contains the year the season the month, the fortnight, the day, the time, the country and the particular district, the 25 village the house or dwelling place the point at issue the designation the caste the personal description and age which contains the measure and quantity of the object to be secured, the names of the plaintiff himself and of the defendant, and which is marked with the names of the ancestors of himself and of the defendant respectively as also with the names 30 of kings (which contains) the cause of forbearance and the injury done to self (i.e. the plaintiff) in which are mentioned the names of the grantee and the grantor 'Artharat i.e. containing the occasion (for the complaint), in accordance with law i.e. possessing the characteristics of a concise statement with comprehensive significance 'complete,' i.e. 35

1 Another reading is प्रविश्यापनेकन दत्त—Caused by the surety and the monovlender

2 Ch III c

3 Cited in Mitakshara Coll I 652 II 10 27 Balambhatta assigns this to Narada

- not in need of any implied<sup>1</sup> supplements, 'devoid of confusion,' i.e. not containing words of doubtful import, 'containing the point at issue,' which is not without the point which is intended to be established, 'couched in significant language,' i.e. devoid of words having secondary or implied sense, 'consistent with the claim made' i.e. not contradictory to the first information 'intelligible,' i.e. the subject matter of which is well known among the people, 'not inconsistent,' i.e. not against the town, nation the chief judge the king and the like, likewise not inconsistent with the preceding and the next following (statements), not contradictory to the direct evidence and such other means of proof, and also not against the rules of positive law and procedure
- PACL 37<sup>2</sup> 'certain,' free from a doubt as to any other meaning, 'Capable of proof,' i.e. which is fit to be proved, 'concise,' not too much digressive, 'bringing out the whole cause of action,' i.e. stating in entirety without any thing left out, 'not impossible in regard to place or time, devoid of statements such as e.g. 'a betelnut field of the central provinces, a thousand mango fruit of the *sarat*<sup>2</sup> season,' and the like, 'marked with the names of the ancestors of himself and of the defendant, as also with the names of kings,' *Purah* i.e. the defendant, 'himself' i.e. the plaintiff, 'ancestors,' i.e. of these, the father and the rest several kings of the period of occupation, the names of these, the names of the ancestors of self and of the defendant, and of the many kings, marked with these, the rest is of evident meaning

- The conditions commencing with the mention of the cause of action, and ending with the avoidance of incongruity as to place, time etc together with the names of the plaintiff and the defendant are of use in regard to the plants in all kinds of disputes, therefore these must always be necessarily stated in all plants, because without these, the point at issue can nowhere be accomplished with ease. The details as to the year etc moreover, are not all of these of use in all cases as even without some of these, there is the possibility of the object being secured. Therefore, where there is a use of these there only should be entered and not elsewhere, as there is no necessity. There, (the mention of) the rainy or other season would be of use in a dispute regarding the doubling of

1 अथवाकृतनयेन—no need of adding anything as understood (अव्याहृत)

2 शरद—one of the six seasonal divisions of a year comprising the months of आश्विन and कार्तिक corresponding approximately to October and November. Both the instances are given as illustrative of an impossibility by place and time

the amount lent at interest, as also in a dispute regarding priority in transactions of gift, sale mortgage etc The mention of the country, region etc, and likewise of the names of the ancestors of the defendant and of himself and of the kings as also of the grantee and of the grantor, will be of use in disputes regarding immovables (The mention) of the point at issue, the designation, the caste the personal description and age, is of use in trials about theft, sale without ownership and the like, as also in disputes regarding money, (the mention) of the measure and quantity, in disputes regarding things which can be measured or weighed, as also in trials about theft etc (the mention) of the cause of forbearance would be of use in a dispute involving negligence regarding a place and the like, (the mention) of injury to self would be of use in a dispute regarding a debtor and surety, thus this is the way In this manner also it should be understood that the inclusion of the cause of action together with the year etc should be made at places according to use Hence also Kâtyâyana "The country, likewise the place the location likewise also the caste, the name, the place of residence the measure and the name of the field also, the recital of the names of the father the grandfather, also of the past kings—in disputes regarding immovables, these ten should be entered The import is, that these are useful

Harita also 'A seat a bedstead a conveyance copper zinc, iron articles corn articles of stone a cloth a biped also a quadruped, jewels pearls and corals a diamond silver and gold—if there be a collection of these (materials) then an enumeration should likewise be made In which ever country moreover by whichever standard an article is measured by reference to that should the enumeration be made by the dealers Diamond is hard The meaning is that having measured by that standard the enumeration should be made

Thus, moreover, whichever is of use in whatever place there in the absence of that, the securing of the point at issue being impossible a particular plea devoid of the necessary detail is certainly unacceptable Hence also Kâtyâyana 'A plaint is regarded as inadmissible which lacks (the mention of) the place and the time which is devoid of the statement as to the thing (claimed) or the amount and which is without the means of proof ' 'Means of proof,' is the measure of the thing claimed Likewise, a plaint which is devoid of the characteristics of a cause and the like must certainly be discarded ' The king should discard a plaint which (contains what) is impossible does not disclose any injury (to the complainant)



- is meaningless or causeless, cannot be proved, or is contradictory' There  
 'an impossible' has been explained by Brhaspati 'That which has not  
 been done by any one is known as impossible' There the example is  
 'A pot of one thousand <sup>1</sup> *palas* has been taken away.' 'Not disclosing  
 any injury' is harmless, e.g. he carries on (his affairs) in his own house  
 in the lustre of the bright lamp in my house The meaningless and cause-  
 less have, however, been pointed out by Brhaspati "A petty fault about  
 a trifling matter is known as 'meaningless', while that which involves no  
 disturbance in the work should be known as 'cause-  
 less' There the example of meaningless 'I was  
 grazed at by him with a smile, or 'my lac was taken  
 away by him.' Of 'causeless' however, such as 'Yajñadatta boastingly  
 repeats near my house' By another way also have these two been ex-  
 pounded by the Same Author "A proceeding which does not contain any  
 of the titles such as money lent at interest etc. is a meaningless proceed-  
 ing, also that which is without abuse or the like is a 'causeless' one"  
 That which does not contain any of the eighteen titles of law, such as  
 Recovery of debts and the like, is meaningless, a plaint not containing  
 material not useful for establishing the point at issue such as abuse etc. is  
 causeless, this is the meaning

- Plaints which cannot be proved and also those which are contradic-  
 tory, have also been expounded by the Same Author "This man must  
 return my bow made of a hare's horn' such a plaint the wise call impos-  
 sible and unworkable A plaint, in which when recited, there would be  
 opposition against the chief judge or even the king or the city, the nation,  
 such a one is called contradictory'

- Nārada<sup>2</sup> also points out the faults of plaint "Where a plaint re-  
 lates to a different subject, is meaningless, which is without the (means of)  
 proof or of title, of which the writing is deficient, or redundant, or dam-  
 aged, these have been declared as the defects of a plaint" He himself ex-  
 pounds (these) "In a common cause where one pleads, or for a plain-  
 tiff when not appointed, such a one, the wise regard as pleading for  
 another" The meaning is that where one only of a group pleads the

1 पदसहस्रहृत एक<sup>3</sup> घृहीतम्—एषाह (athāha) is a pot a vessel एत is a measure  
 = 4 or 5 *suvarnas* and one *S. caruṇa* = 16 *Māśas* Thus a pot of 1000 *palas* would be  
 5000 *suvarnas* about 2 *manas* This is given as an example of an impossible thing  
 A more appropriate example is the one given in the *Mudālaharā* viz. theft of a  
 hare's horn'

<sup>2</sup> Intr II 8

cause of the association or of one when not appointed or related in a  
 plaint "Where out of hatred or infatuity one declares 'This man is a  
 Brahmicide,' and gives up the point, such a plaint is regarded as one with  
 out a cause' The meaning is that where a declared point is abandoned by  
 the plaintiff, such a plaint should be regarded as lost 'Where in a suit  
 which is for counting weighing or measuring, is also in that in regard to  
 a house, field or the like, the number is not set out, such a suit is (regard  
 ed as) devoid of a standard That plaint is regarded as sourceless  
 (*anigama*) where it is not written whether (the subject) was acquired by  
 learning, or was secured by a pledge, or was received as a donation, or  
 purchased or accrued in hereditary succession' Where, the year, the  
 month, the fortnight, the date, is also the day have not been written that  
 should be regarded as one where the writing is deficient Where after  
 writing out a plaint, and while yet an answer has not been set out, one indi  
 cates his witness even before that plaint should be regarded as redundant  
 Where the pleas for both sides have all been written by the plaintiff or  
 the first informant and is written unambiguously that plaint is regarded  
 as 'damaged (*bhashtam*)' The meaning is, where the pleas for both  
 sides have all been written by the plaintiff the first informant

Likewise, the Same Author states other pleas also which are unaccept  
 able A plaint is considered as unacceptable which is out of order  
 (*Bhinnakrama*) is in an inverted order (*Upakrama*), is in confused  
 order (*Prakirnartha*) or which is meaningless as also that the object  
 aimed at in which is beyond time and also one which is multifarious  
 (*Udharita*) There the *Bhinnakrama* out of order has been expound  
 ed by the Same 'That plaint has been declared as out of order,  
 where an idea of the plea cannot be gathered by putting (the words)  
 in proper places

The meaning is that that is out of order where the letters have been  
 placed in inverted order In inverted order is the meaning of which  
 becomes intelligible by placing (the words) in separate order 'In con  
 fused order is where the sense is scattered The Same Author expounds  
 the meaningless and others Where the original sense is abandoned and  
 its effect is set out, such a plea is indeed meaningless as it lacks the  
 means of proof

1 Here is a reference to the five principal universally regarded sources of  
 acquisition of ownership Cp. *Upakrama* एतत् प्रसिद्धं सर्वत्र विद्यमानं --

Where an object is set out which has passed beyond time, such a plea is regarded as beyond time although there exist means of proof. A plea in which the point at issue is twofold, being in reference to different periods, and which is discriminated by reason of a difference of proof

5 - that is declared as 'multifarious' 'Means of proof',

PAGE 39\* i.e. original means of proof 'Beyond time' i.e., beyond the period of limitation 'Difference of proof,'

i.e. difference in the means of proof

Likewise, the Same Author mentions other faulty plants also. "By inserting a different letter as also by causing another meaning to arise, a writing becomes confused, and the evidence also is rendered confused. Where there has been a neglect for twenty or ten years of the thing asked even by one who was competent the case of such a one becomes falsified. Where one writes down the means of proof along with the thing to be

10 secured, by reason of the absence of the order of the recitals, such a suit also does not succeed' Evidence for securing the object is the means of proof

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Hârita also 'A plant in which the object to be secured and the means of proof therefor have been entered in two ways either from one's own objective or the other alternative such a suit also is negated' 'Means of proof' i.e. the point which has been set out for being established, 'in two ways,' i.e. by two different means either in regard to the object to be secured, or by a way different from the known object i.e. by its opposite way, a suit in which it is entered, that also is a faulty suit, this is

20 the meaning

25

Bhrgu also "Where the point has been abandoned by a defeated party, or where one alternative is to be assumed at a time there the object aimed at will not be secured, as being excluded by the *S'istr* and the *S'ichas* 'Defeated,' i.e. the defeated claimant. Where in one suit a contradictory as well as an uncontradictory, both points have been entered, one should summarily dismiss such a suit. Pitâmaha also

30 A party who includes statements which are mutually contradictory, the suit of such a one will not succeed, being a mixture of contradictory assertions' Kâtyâyana, also 'A party who does not say that '(the opponent) does not wish to do what is just or does what is not just, the suit of such a one will not succeed' The meaning is that one who does not plead i.e. that 'After having taken my property which accrued to me justly, like this, in a negative manner pleading obstruction (on

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the part of the defendant ), or ' he takes away my land &c ' like this in the form of a positive statement Also " A plaint which is opposed to the town or the nation, as also that which has been excluded by the King, and which is a mixture of several pleas does not succeed " That which is opposed to the usage of the town, or the nation, or which contains an object which has been excluded by the King, such as a tax, a building &c, one, which is a mixture of several pleas such as recovery of a debt and the like, by reason of a difference of evidence, does not succeed, this is the meaning

As to what has been stited by the Same Author ' A King desirous of arriving at the truth, may undoubtedly admit even that plaint which contains several counts but which is in conformity with the principles of law ' that is with a view to demonstrate the admissibility of a mixture of several causes, if differing in time or for demonstrating that for a proper statement of facts as they occurred in the case of several kinds incorporated in one title such as recovery of debts or the like, or of the same kind such as gold beast, corn and the like, taken under different conditions as to the number, measure, country, period (rate of) interest and the like and that all that should be (ordered to be) paid back, and thus should be regarded as admissible Therefore, there is no contradiction with ancient texts ' The origin free possession, interruption, and supplication likewise these four when mentioned without the cause are declared as faults of a plaint ' Origin, is the source of the acquisition of property such as acceptance of a donation or the like free possession, is uninterrupted possession according to one's wish, interruption is owing to national calamity or a like cause of break in the same possession, supplication is statement of the origin of possession by arguments These four is the origin etc are declared as the qualities of a plaint Those origin etc when moreover have been entered in the plaint without the cause is without the reason for their inclusion those are declared to be the faults of a plaint Therefore here that which is in requisition should be retained, while that which is not in requisition should be struck off,

to that effect also the same Author ' One should cut out the redundant points and should also duly supplement the defective one should set out on the floor so long as the cause of action has not been determined ' ' Cut out ' is take off ' Cut out ' is strike off, ' on the floor ' is (only) indicative by implication Moreover, the Same Author ' The Chief Judge should write down the plaintiff's statement, as made by him naturally in his own way,

- on a board in white chalk and then on a parchment after it has been revised. 'As made naturally in his own way, i.e. made without fear or any other like external cause, revised, i.e. cleared of defects or redundants as also cleared of the faults such as impossibility etc. To that effect also Brhaspati<sup>1</sup> "Those conversant with (the requisites of) a plaint regard that as a good plaint which has been freed from the faults of a first information where the point at issue is accompanied with its cause, which is definite and well established among the people' 'Well established among the people' i.e. not opposed to the general law, as it comes to be stated by this text itself viz. well known among the people that such a cause of action is free from the defects of a plaint. Hence also Manu<sup>2</sup> - 'A plaint is not regarded as admissible in court even though its cause is well established, if it speaks outside the established rules of procedure. The meaning is that the members of a Court must not accept a plaint if it is against the rules of procedure even though it be free from all faults.

- A plaint of the characteristics as stated above is of four varieties, so says Brhaspati. "A plaint should be known to be of four varieties, viz. that containing a charge based on suspicion or on facts is also a prayer for the object asked for and a fresh decision of a dispute which had been decided before'. In this connection Narada: 'One may make corrections in the first information of a complainant so long as the answer has not appeared in the plaint, when blocked by the answer, the correction shall cease.

- It should not however, be supposed that like the rule in the maxim of the concl<sup>3</sup> and the time a plaint cannot be revised after the time for filing an answer is passed since says the Same Author<sup>4</sup> 'Before the defendant tenders the answer to the plaint the plaintiff may amend his statements as much as he desires. Some desire a revision even after an answer has been entered but that should be discarded as it would lead to a state of incongruity, and would also be contradictory.

1 This text is also ascribed to Katyāyana by some.

2 See Manu Ch VIII 163. There, the reading is मयान भवति etc. The verb occurs in reference to the agreements as to payments of debts.

3 शतवह्न्यायः i.e. The rule of simultaneity or co-occurrence i.e. at a particular period of the day a particular note (of the concl) is fixed to be struck and by that particular note the particular period is inferred. So simultaneity or contiguous order is indicated by this maxim e.g. वेद्यया वेद्यव.

4 Intr II 7

to the texts stated before Hence also the Sangraha-kâra "After the incomplete and redundant portions of a plaint have been well adjusted by the officers, again having concentrated attention, one should hear the answer thereafter, since, after the defendant has commenced the answer, the statement of the plaintiff must not be accepted, even if useful as the time (therefor) has gone by" 'Commenced, i.e. given for, while yet the answer is being given a replication is admissible To that effect also Kalyâna 'Either through forgetfulness or trickery, if anything has not been stated by the first informant, that may be accepted from both even in the course of the answer" 'From both', i.e. from the plaintiff and the defendant Of the defendant however, (addition to) the answer may be (admitted) during the course of evidence

When, however, an answer has been accepted by the members of the court without even revising the first complaint then after punishing the members, the procedure of an affirmation again may be observed

When, however, the plaintiff is unable to make the affirmation immediately, then says Brhaspati 'If the complainant is not able to make a statement owing to incapacity time should be given to him according to the requirements of the transaction and his capacity

Thus in the Smṛtyachandrikâ, the part relating to the Plaint

Now the part relating to the Answer-Uttarapâdah

Here Brhaspati 'When the first complaint has been properly determined after sifting the acceptable and the unacceptable, and after the cause of action in the plaint has been fixed, thereafter, one should cause the answer to be written down The meaning is, that although determined by the plaintiff when the plaint is firmly fixed by the chief judge etc after discrimination thereafter the defendant should be made to have the reply to the plaint written

Narada also "When however a plaint of this character has been settled by the plaintiff, then the defendant should give a reply relating to that plaint Of the expression of this character the meaning is expounded by Harita 'Concise in words profuse in meaning devoid of the faults of a plaint having witnesses, containing the cause faultless, well settled, where such a plaint has been written by the plaintiff the defendant should then give a reply relating to that plaint' 'Having witnesses, i.e. having those on it who have inspected it, such as the Chief Judge and

the like When, however, not of this character, then he need not give, this is evident from the context, to make this clear, the Same Author takes as an example (a case of) a faulty plaint, and says that to such a one no answer need be given, "Where the land is common (property), or  
 5 where the money is vested in an association, when one man makes an application, a wise man should not declare a reply"

Therefore, to a plaint which has been duly examined alone should an answer be given, so says Yājñavalkya <sup>1</sup> 'Of the defendant who has heard the plaint the answer should be taken down in writing, in the pre-  
 10 sence of the first informant (plaintiff or complainant) Of the person giving a reply to the plaint which he has heard, this is the literal meaning The Sangrahakāra also "When a plaint has been written down upon paper containing a statement which can have no other mean-  
 15 ing, not a secondary sense, which contains a lawful origin, and which is made up of words which are not incomplete or redundant, vitiated or made of other letters, this then is the time for the defendant to give a reply' The meaning is that after a plaint has been written in such a manner that all the characteristics, such as having no other sense and the like are there

This rule as to time, however, is only in regard to the cows and the  
 20 like For so Narada<sup>2</sup> 'In charges concerning cows, land gold, women, theft, abuse and in emergent cases as also in heinous offences, and in (the case of) a calumny he (the defendant) should be asked to plead in defence immediately only' Calumny, i.e. an averment of a sinful act, although it is a kind of abuse, its repetition again is with a  
 25 view to (its) importance An emergent case has been mentioned by Kātyāyana "Where the excellence of a thing is likely to deteriorate, or suffer destruction or loss even there no time should be allowed, it must be attended to, for indeed that is an emergent case Likewise, in regard to other matters the answer, should also be immediate, so says the Same  
 30 Author 'In (a dispute regarding) a cow, a bull, a field women, delivery likewise, deposit, bailment given for use, similarly also purchase, and sale, violation of a maiden, theft quarrel, violence, a deposit, circum-  
 35 vention, and false testimony also, he (the defendant) should be compelled to plead immediately' 'Circumvention' (something) agreed to under the influence of fear Yājñavalkya<sup>3</sup> also 'In charges regarding felony, theft, assault, and cow killing and in a complaint in an emergency and about a woman one must compel the respondent to plead im-

mediately only, in other cases, time has been permitted at discretion (of the court) " 'In other cases,' i. e. such as in a case

of debt &c So also Nārada<sup>1</sup> 'Owing to the recon-  
dite nature of lawsuits, and the weakness of  
memory, in cases relating to debts &c, one may

allow time at discretion, with a view to ascertain the true facts,'  
'Relating to debts etc' i. e. relating to the titles of law such as Recovery  
of debts and the like Hence also Pātāliha. "In suits relating to debts  
bailments, deposits, donations, compact among men engaged in joint  
undertakings, and for a share of a heritage, time should be allowed with  
effort "

In these and other cases also, time should be granted only to a defend-  
ant asking for it on grounds of failure of memory or the like To that effect  
also Kātyāyana. "After hearing the point reduced to writing, if the defend-  
ant in the suit applies for time for a (proper) reason, it should un-  
doubtedly be given to him." In regard to recently concluded transactions,  
there being the possibility of remembrance, immediately should the  
dispute be (proceeded with), so says the Same Author "In regard to  
transactions recently made, the defendant should be asked to plead  
immediately, or in regard to those over which time has passed, the  
king may grant time to the defendant ' The expression 'to the defend-  
ant' is (only) indicative hence also Nārada<sup>2</sup> "When a party to a suit  
desires to plead, but whose mind does not work, time should certainly be  
given to the plaintiff and the defendant also

And time should be given If it be asked, how much? The Same  
Author says "Immediate, or one or five days, or three days, accord-  
ing to the greatness or smallness of the cause, one may get a month, or  
three fortnights, or seven days in disputes about debts etc" Gautama<sup>3</sup>  
also 'He may wait for a year In this respect Kātyāyana states a rule  
of adjustment 'Having ascertained the time, and the capacity, as also  
the importance or unimportance of the transactions, the king should give  
a short or a long time to the defendant asking for it" 'Time,' in regard  
to monetary relations etc, 'capacity' in regard to transactions which have  
become the subject matter of the dispute. The meaning of the verse,  
however, has been expounded by the Same Author "For a recent hap-  
pening, immediate only, where a year has passed, it should be a day, for  
six years it should be three nights, seven days, for a twelve years' (inter

1 Intr I 44

2 Not found in the printed text

3 Ch XIII 28



val), for twenty years, ten days or he may get half a month, a month, when thirty years have elapsed, three fortnights shall be thereafter" The Author points out the rule of adjustment by regard to capacity "For a period of less than a year, he may grant himself as he likes, for a year in the case of the idiot, the lunatic or one suffering from a disease Where one has gone in another direction, as also where the particulars of the thing are not known, or where the thing itself or the witnesses are in another country, these time should be given to men until their return to their own country" For the several alternatives commencing with a period of less than a year, a day ending with three fortnights, should as before be adjusted by the presiding authority of the court according to the requirements of the cases 'The thing itself,' i.e. the property, the subject matter in dispute

Likewise, the Author explains the rule of adjustment by regard to the transaction 'A day, a month, or a month and a half, a season or a year even, may be granted at the longest, according to the nature of the transaction 'Nature of the transaction,' i.e. the nature as to the greatness or smallness of the transaction

As the adjourned time thus adjusted arrives, an answer should be written which will not be less or in excess of the substance of the plaint, so says Brhaspati 'When the disputants have simultaneously gathered together near the member of the court he should cause an answer to be written appropriate to the recitals of the plaint' In this respect, Kātyāyana states a rule to regard to the king "Whatever the customary rule as handed down by successive traditions in a particular case may be, taking that into consideration the king should cause an answer to be given according to law"

Prajāpati states the characteristics of an Answer 'Men versed in law regard that as an answer, which covers (the points raised in) the plaint is substantial, unambiguous, not inconsistent, and is intelligible without an explanation' 'Covers the plaint' i.e. covers the entire plaint, 'substantial,' i.e. capable of meeting as an answer the averments of the plaintiff, 'unambiguous,' devoid of break, implications etc., 'not inconsistent,' i.e. consistent with the point at issue, 'intelligible without an explanation,' i.e. easily understandable Harita also "In close connection with the points in the first information of profuse sense, not confused, not cryptic, not with its words loosely joined, nor too prolix, essentially concise, un

ambiguous, not arising out of only one point in the plea, audible to the plaintiff, not having a suppressed sense, an answer of this character should be given ' 'In close connection with the points in the first information,' i.e. closely in pursuance of the asseveration, 'of profuse sense,' i.e. covering all the points at issue not with the words loosely joined,' i.e. preceded by an affirmation for definiteness, 'not arising out of only one point at issue,' i.e. covering exhaustively all the points of one's plea with out any left out, 'audible to the plaintiff,' i.e. heard by the first informant, 'not having a suppressed sense,' i.e. uncrooked in style and intelligible by (the use of) well known words

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An answer of this character should be known to be of four kinds "Of four varieties is a plaint, and similarly also the defense should be of the same kind", vide this text of Brhaspati What are the four varieties of the respondent's plea? Anticipating this says Nārada<sup>1</sup> A denial, by admission also, or by a counterplea, and by proving a former decision, thus an answer may be of four varieties" The instrumental case here is of these characteristics

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There Kātyāyana states the characteristics of the two pleas of denial and admission 'When accused if one denies the charge, that answer one should know as of denial in the legal procedure The admission as to the truth of the point involved is declared to be (the plea of) admission "

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The characteristics of a counterplea, have been stated by Nārada. 'When the defendant admits the statement made by the plaintiff, but sets up a reason that is called a counterplea (or confession and avoidance) "

Hārta states the characteristics of a former decision "If a (party) says that In regard to this cause of action there was a dispute before between him and me, and he was vanquished that is known as an answer of a former decision (or *res judicata*) The answers described as above with the characteristics have been stated by Prajāpati with a view to elucidation 'Whatever has been stated here by the plaintiff in regard to me, all that has never happened this answer has been stated in the smṛtis as a denial This has to be paid to him, what plaintiff has stated is not untrue,' thus is the second (kind of an) answer, known as admission 'This was certainly given by him to me, but it was also paid back to him by me, (an answer) of this sort is known as a counter-plea 'In regard to this cause of action I was sued before by the plaintiff, and he was vanquished by me in that suit,' this is called the plea of a former decision

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This plea of a former decision or *res judicata* is of three varieties ; so says Kātyāyana "I shall prove by (the evidence of) persons in authority, of witnesses, or by a document, that he was vanquished by me formerly, thus a plea of *res judicata* is of three varieties" The expression

- 5 'By persons in authority' is indicative, by implication, of the investigators in the judicial proceeding

Likewise (the plea of) denial is of four kinds, so says the Same Author 'This is false,' 'I do not know,' 'I was not present there at the time,' and 'I was not born at that time,' thus the answer of a denial is  
10 of four varieties' In this manner, in the plea of an admission also, varieties may be inferred according to possibilities e.g. 'true' 'It is so, as he says' and the like Of the counter-plea also, '(yes) was accepted, (but) was given back' or 'was obtained as a donation' etc. such and other varieties may be noted

- 15 In this connection Brhaspati "The law has been stated relating to the defendant in regard to the demonstration of the points raised, as issues of the four varieties also which should not be accepted, that is being stated now, what is other than the point at issue, which is abstract, which is less or more, and what is irrelevant, what is not comprehensive, which  
20 is unsubstantial dubious one should not allow an

PAGE 44\* opponent to plead "Other than the point at issue': e not capable of removing the allegations made in the plaintiff's averment, 'abstract,' : e which is devoid of the position of a defendant, 'irrelevant' : e which does not pursue (the point in) the  
25 accusation'

- Kātyāyana also "A reply which is ununderstandable, contradictory, too cryptic or too prolix, dubious, impossible, not clear irrelevant, full of the fault of exaggeration, which does not meet all the points (in the plaint) which interrupts the plaintiff in stating his plaint, has a suppressed meaning,  
30 (given) while he is confused, likewise (which) requires an explanation is senseless, is unsubstantial, is not commended by the wise" Here the Same Author expounds the first five (varieties of) a faulty reply 'A reply which has been written without knowing the thousands of marks and forms, or the compact, or which has been stated in another language is  
35 known as ununderstandable' The meaning is that that is (called) ununderstandable which has been stated in ignorance of the number of marks or parts of the body, or of the compact, or which is couched in a language not of the country 'It was returned in my childhood' or 'it

was indeed not returned', when one states in such a manner, that reply should be known as 'contradictory'. The meaning is that, that of which the first (part) is contradictory to the other (part), is a contradictory reply.

"Where, instead of stating 'he was formerly vanquished by me in regard to this point,' it states 'formerly by me,' such a reply is (called) incomplete'. The meaning is that when it should have been stated that 'in regard to this cause of action he was formerly vanquished by me,' he simply says 'formerly by me,' that (reply) is an incomplete reply. When the reply should be 'was taken by me,' it is added, 'I did the work for it, (i.e. for) the money which was formerly taken,' that is an answer which is too prolix'. Instead of stating a reply of admission, viz 'was taken,' (with the addition) that the work, etc., the reply is too prolix, this is the meaning.

"When the statement should be 'is payable by me' it is 'it is (not) payable by me,' the reply should be known by the wise as ambiguous". In the clause 'payable by me' a suppressed *a* is found to be indicated by the sign *s* it is ambiguous, of this kind, this is the meaning 'Impossible,' 'the money (asked) to be payable by me had been paid by the son of my great grandson' a reply of this sort 'Not clear,' i.e. not possible to be easily declared 'this is the reply'. These two kinds of faulty replies are clear therefore have not been expounded.

The Author expounds an irrelevant plea 'Violence was formerly directed by this either by force or weakness,' such a statement is regarded as 'no statement, and is called irrelevant. The meaning is that that is (regarded as) irrelevant, which becomes exhausted by the statements of the plaintiff more than once and which contains clauses which are mutually contradictory. 'Full of the fault of exaggeration,' i.e. by reason of an exaggerated statement, becoming faulty, e.g. when the charge is 'a hundred should be paid,' the answer is 'two hundred have been paid,' and the like. The Same Author has expounded the four faults viz 'Not meeting all the points' and others. When the plaintiff says, 'A thousand and a half were given to this man,' and when the answer is 'half of that has been paid back,' that is an answer which does not meet all the points."

Where, while the plaintiff has not properly set out his case in the plaint, the defendant (interrupts and) says 'nothing was taken formerly by me,' that is an answer by interruption. The meaning is that even

1 अकारप्रत्ययः—the letter *a*, meaning a negation, and expressed by the sign *s* (अप्रत्यय) ॥ *g* here देव प्रत्यय प्रत्ये ॥

before the settlement of the plaint, an answer, such as denial &c is an answer of interruption

“The answer which says ‘can any one return a red lotus which was not taken?’ should be known in legal procedure to be one having a concealed meaning’.” The meaning of the illustration of this kind of faulty answer is ‘A (red) lotus was not taken and so I will not give’

“When the reply is ‘is it always by him to be paid, may be, by me also may have to be given,’ such a one is called a confused reply’ The meaning is that, that is a confused reply where several words are connected ‘To be understood by means of comments,’ i.e. by itself difficult to be understood. The unsubstantial has been stated by him ‘No teeth exist of a crow, where the answer says—exist,’ that answer is known to be unsubstantial (*asāra*)” The meaning is that like the appearance of teeth in a crow, it is purposeless

Likewise, where occur in the same plea, the pleas of admission denial, and many other such pleas that is regarded as ‘no answer,’ so says the Same Author “That which admits of part of the

‘PAGE 45’ claim as true, sets up a special plea as to another part, makes a denial of a third, is regarded as no answer on account of the mixture (of several pleas)’”

It may be argued indeed even in a mixture, as by each answer there is the repudiation of each part of the plaint, there would be a counter plea for the entire plaint, how then can it be said that it is no answer? True and it is for this reason that the Same Author has stated in justification of its being no answer “Moreover, in one suit, the burden of proof cannot lie on two litigants, nor can both obtain judgment, nor can two proofs be adduced simultaneously in one suit”

The meaning is this Proof consists of documents and other means (of proof), the burden of that lies upon the defendant only in the pleas of counter claim and *res judicata* also, in an answer of denial, however, upon the plaintiff only, in the plea of admission (of the truth of the plaint), it does not lie upon any one as will be stated hereafter Thus then where there is a combination of the three pleas other than that of admission, there the defendant has to adduce proof in two while for the plaintiff it is in one, where (the combination is) of an admission and a denial, there defendant alone has the (burden of) proof for the two

1 निवृत्तय of mysterious import The *Mitaksharā* points a different interpretation for this term (See p 663 II 11-16)

moreover, it is of the denial and the special plea or of the denial and *res judicata*, there the (burden of) proof lies on the plaintiff and the defendant in regard to each one. It should not, moreover, be said 'let it be as may happen (to be necessary), for, indeed, proof is adduced for the establishment of the point at issue'. In one trial there is only one point at issue and of one disputant only, therefore, there cannot be the (burden of) proof on two, or on one, for two points, as there cannot be a point to be established by both and moreover when one point at issue has been established by one means, proof by another would be useless. In (the case of) an answer by admission however, in a combination with other pleas this fault does not occur, still in one investigation in regard to the four puts and in regard to a half of it, a conclusion would be contradictory, and therefore, there also it would be (a case of) no answer also. Therefore it has been properly stated 'By (reason of) a combination, it would be a non answer'.

Thus moreover, one answer only should be admitted which would cover the plaint in entirety. Where, however, in any case an answer of that kind is not obtainable, but on the other hand a variety of an answer on each portion variously there on account of helplessness, in conformity to the answer several plaints should be affirmed with a view to avoid a fault in the plaint a separate answer for each plaint should be taken. Otherwise there would be certainly an absence of a decision. Hence also has it been said. By reason of a combination, it would be a 'non answer'. The import is that according to the prescribed procedure when the combination (of pleas) is removed there would be the answer itself. Hence also in regard to this subject, in accepting an answer, has been stated by Harita the rule of priority to be preceded by putting questions thus "If a denial<sup>1</sup> and a special exception should occur together and also if the plea of admission (be made) with any other which of these should be accepted is an answer? The inference is, the first. The Author states the first which should be accepted. 'That which contains the most important point or which is conducive of proof, is to be regarded as an unmixed answer any other answer becomes otherwise. The meaning is this when there are more answers than one other than an answer of admission, that which contains the most important point should be accepted first. When the answer of admission is along with more than one the answer of

1 In regard to the discussion as to the combination of pleas See Mitakshara Text pp 8 9 and Transl Coll pp 664-667

2 सिद्धोत्तरा is a better reading Apararka assigns this text to Vyasa

admission even though containing the most important point should be discarded and another answer should be accepted, as no result would be produced by the answer of admission

- It should not be said that this text is only applicable where at the time of (filing) a reply there is an intention of giving more than one answer which will cover the plaint, on account of the undesirable position of taking as (implied or) understood words indicative of an order e.g. upon an accusation by a certain man viz. 'a lost cow of mine was seen in the house of this man, the person charged answers, 'This is false, in my house itself was it born' or the like. Since it has been stated 'Not a mixed one, other than this becomes otherwise' The meaning of this thus if in this order, an answer becomes unmixed, otherwise than this: e. if simultaneously, it certainly would become a mixed plea. In the case of more than one answers, however, covering the plaint, there is no possibility whatsoever for a plea being (regarded as) a mixed one therefore this text is only in regard to a mixed answer. Hence also, in regard to more than one answers covering a plaint, another text has been commenced
- by the Same Author 'Of the two answers, viz. of denial and special exception, the special exception should be accepted. The import is that by reason of its unmistakable demonstration, the answer of a special exception has greater weight than the answer of denial. Therefore it should be taken as understood that the answers of a denial and of a special reason being taken merely as illustrations, even in a simultaneous occurrence with another answer, that which contains the most important point should be taken. Where, however in an answer of combined pleas, by reason of a parity of importance there is no scope for the order as stated before,

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there also, the answer should be admitted in an optional order as a decision has necessarily to be reached. An answer thus determined, should be given by

- the defendant himself alone. To that effect also Harita "There after the essence of the point at issue, has been properly drawn out an answer should be offered by the defendant in close pursuance of the plaint, and should be absolutely free from faults and marks"

- When, however, he by himself does not give, and the time for giving an answer has also elapsed, then says the Same Author "To the plaint, if the defendant does not give an adequate reply, then he should be compelled to give by means of peaceful persuasion and like other methods". Should be compelled' i. e. by the king. So also Narada "One should give a

proper reply to the point at issue, one not giving, the king should compel to give, by means such as peaceful persuasion, schism etc until that point has been properly brought up ' The peaceful persuasion and other means have been pointed out by Harita "Speech with pleasing persuasion is *sāma* or conciliation breach is the show of fear, and inducing by a money payment is gift, punishment is beating and confining "

By Vasistha also 'Crookedness, peace, and breach, also punishment, these four, delusion, forbearance, and trickeries are the seven means declared For one who is not amenable to these means even, the Same Author says "When goaded by (these) means, one, however, who does not give a reply, such a one after the passing of seven nights is (regarded as) defeated, and becomes liable to pay

Thus in the *Smṛtichandrikā* the part relating to the Answer

Now some texts bearing on the topic of disputes are, being written There *Yājñavalkya* ' Without being discharged from an accusation (already pending against him), a person should not be allowed to be charged again ' Without being discharged : e, without removing away Here, the Same Author<sup>2</sup> states an exception "A countercharge may be allowed in a case of delict as also of heinous offences ' The meaning is that (in such cases) there is a likelihood of a counter offence ' In delict, : e in the case of both kinds of violence (*Pārushya*)

In regard to the accuser also the Same Author<sup>3</sup> says "Nor what has been alleged should be allowed to be changed " While one who has been charged by another complainant, another complainant should not (be allowed to) charge before that complaint is refuted The meaning is, that by giving up the refutation of that another should not be stated He, moreover, who pleads another, such a one becomes defeated by reason of his change of statement In that effect also *Narada* ' "One who alters a statement, one who shuns a trial at law, one who does not put in an appearance, one who makes no reply, as also one who absconds when summoned, these are the five varieties of a *Hina* litigant " Likewise, a *Hina* on account of his taking to another pleading, has been described by

1 Book II 9

2 Book II 10

3 Book II 9

4 Intr II 33 Here the word *srqq* is taken as elsewhere : e in another proceeding and not the usual sense in which it is used : e false In the original *Smṛti* of *Narada*, this expression is used in reference to one who alters his former statement in the same proceeding



the Same Author <sup>1</sup> "He who gives up a former pleading and betakes to another again, such a man should be regarded as a *Hina* or defeated litigant by reason of his transition from (a) dispute (to another)" 'Former pleading' : *c*, the (first) information So also *Kātyāyana* "After  
5 having lodged a plaint, if one abandons it and files another, such a one thereby will be deemed to have started another plaint, and on that account will lose (the cause)"

So also having once charged another one says 'I will not proceed with the charge' and thus speaks contrarily, such a one also by reason of his  
10 having pleaded differently, loses, so says the Same Author "If a person after having charged another says 'I did not put forward the dispute' and thus speaks contrarily, such a one should be declared a loser" Similarly also one who departs from his first plaint reduced to writing loses his case by reason of a departure of pleading, so says the Same Author

15 "One, however, who after having caused to be written a statement, subsequently makes a statement again in reduction or addition to it, such a one loses, he is not entitled to make a change." 'Caused to be written,' : *c* on paper, as  
\* writing and striking off on the ground has been stated by the same  
20 writer, 'Charge,' : *c* the first complaint

This undeservedness however, should be understood to be only when the answer has been finished If an answer has not been finished, there would be loss (of the suit) only, but not undeservedness, as before the reply is completed the revision of the plaint has  
25 been permitted in the case of forgetfulness or helplessness Similarly a party incurring the loss of his suit has been pointed out by the Same Author by his avoiding the evidence or not being present "The members of the court as well as witnesses should be regarded as evidence (*Kṛyī*), by the wise, he who avoids such evidence through infatuation is  
30 called the hater of a trial (*Kṛyī dūṣeṣu*), after the summons, if he does not appear, he is non suited at once" The meaning is, that for non appearance after the summons, he loses the suit immediately Likewise, the Same Author describes a suitor who is non suited for not giving a reply : "If even when called upon to speak one does not speak, incurs immediate  
35 imprisonment, on the second day defeat should be regarded to be of

<sup>1</sup> *Narada Intr II 24*

<sup>2</sup> *हीन*—a person who loses a cause, a defeated party, and *हीनता* is defeat or loss of a suit

that wicked man " 'Defeat' & loss Hence also Harita "If one passes time under an excuse, even without making a statement in the court and while making a statement he states falsely, is the mark of a losing party" 'Under an excuse, & under a pretext So also Katyâyana "Under a pretext merely, one who desires to have a long (adjournment of) time, that should be known as deceitful and has been declared as a reason causing the dismissal of the suit'

'One running away when summoned' is also one who after having come to know of the summons, for the removal of a charge shulkingly moves about With a view to indicate the liability for a dismissal greater and greater in degree in succeeding order, the text—'a *Hina* is of five varieties' has been stated, and not for restricting that five only are the varieties of a *Hina*, as *Hinas* have been stated in the *Smritis*, under other circumstances also The object of indicating the greater liability of a *Hina* however, is for indicating the higher punishment It has also been stated by Katyâyana "One changing his pleas should be made to pay five *panas* one avoiding a trial ten *panas* one not appearing twelve, and one not stating a reply sixteen, one running away after he was summoned twenty *panas* Here in the case of the third and the fifth, when a punishment has been incurred, the Same Author states a special rule,

When one who has been summoned thrice and has not appeared or one when summoned is running away and five nights have elapsed the king should punish him Also *Hina* on account of another reason has also been indicated by the Same Author 'Where one corrupts one of those who have heard the dispute or tempts a litigant also, such a one should also be declared as a *Hina* By *Brhaspati* also 'One who causes these & fear or breach or terrible obstruction to the plaintiff in the trial at law of a money suit, such a one is non suited' The meaning is that in a suit relating to a money transaction these & fear &c if all or any are practised by a litigant such a one is non suited 'Terrible', & creating fear through another source By *Manu* also "One who points to a wrong person or having pointed out, (afterwards) conceals as also one who does not realize that his first and subsequent statements are contradictory or confused, or having stated what he meant to prove, afterwards varies (his case), or who being questioned on a fact duly stated by him does

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not abide by it Having stated that there were persons who knew, when asked to name (these) one who does not point out, the officer of the court should, for

these reasons, declare him to be non suited (*Hina*)” The meaning is this

- o *Adeyam*, ‘wrong person’ : *e* a witness who is likely to have been present at the time of the trial or indicates one who is likely to be available, but afterwards demes saying ‘I did not cite him,’ who, moreover, does not realize the contradiction in his own statements severally made, one, also, who ‘under an excuse’ : *e* a pretext, such as ‘I have a pain,’  
10 or the like, runs away or absconds, having made a statement well thought out and settled, when questioned ‘what do you say here?’ does not give any reply whatsoever One, moreover, having declared ‘There are witnesses,’ when asked even to ‘mention these does not mention’ then for the reasons aforesated, one in charge of the administration of justice  
15 should declare

- From these *Hinas* also a penalty in proportion to the guilt should be recovered To that effect also is *Kātyāyana* in connection with the position<sup>1</sup> of the *Hina* “That (i.e. the penalty) should be recovered in proportion to the guilt, there would be no further litigation’ : *e* in  
20 regard to the establishing of the point at issue

- This prohibition, however, is in regard to disputes caused by anger, since says *Nārada*<sup>2</sup> “A verbal trickery does not vitiate all disputes relating to property, for, in suits relating to cattle, women, land, immovables and recovery of debts, although (the claimant is) liable to a penalty,  
25 one does not lose” The meaning is that in all suits relating to property, such as cattle etc ‘upon a verbal trickery’ : *e* even when a wrong statement has been made, ‘one does not lose’ : *e* the suit is not entirely dismissed, since in such a case, although he is amenable to a penalty, there is no loss of the claim made

Here *Kātyāyana* states an exception ‘When the statements of both (sides) have been written down and the trial of the point involved has commenced, one who avers something (which was) not said (before) will have his suit dismissed on that point’ *Yājñavalkya*<sup>3</sup> also “He who

1 *हीनाधिकारि*—*ahikāri* in Sanskrit has a double meaning indicative of the position of a person both in connection with a right or privilege, as well as a liability or obligation or duty In Marathi also the word has a similar double significance

2 Intr II 25 Dr Jolly reads सर्वदादि for सर्वद्विपक्षे

3 Book II 16

tries to substantiate a doubtful claim independently, also, he who absconds, as also he who when summoned (into the court) does not say anything, is considered to be a false litigant (*Hina*) and punishable also.<sup>5</sup> 'Independently,' i. e. without having resort to an investigator, 'absconds,' i. e. without giving the thing to be rendered falls off, or runs away. When the falseness is established by the use of the word 'punishable,' the use again of the word *Hina*, is with a view to indicate that his pending suit also is dismissed. Hence also Nārada :<sup>1</sup> "One who, without having given notice to the king, tries to right himself in a doubtful point, shall be severely punished, nor shall his claim succeed." Brhaspati<sup>2</sup> also : "He who absconds after receiving a summons one who remains silent one who is defeated by (the depositions of) witnesses, or one who gives an admission in his own statement, such are the four varieties of persons who are (known as) *Hinas* (who lose their cause)." "One who gives an admission in his own statement," i. e. by his own statement itself he admits the claim. Here also the mention of four varieties is with the object of indicating that the persons mentioned in respective order immediately lose their suits under consideration and not for restricting that a *Hina* for a cause under consideration is of four varieties only, as other varieties also have been stated.

his appearance, it must not be treated as a fraud. If default occurs in such a case on account of an act of God or of the king, for a departure from the time limit merely, he must not lose his cause."

By observing that 'must not be treated as a fraud' the author indicates that elsewhere also where (a suspicion of) fraud is removed in regard to statements which would entail a loss of the cause, the judicial investigation should be made. Thus therefore, in regard to disputes about property, where a text does not direct a dismissal of the suit there only the plaint of one who has lost his cause should be admitted, and not elsewhere. Hence also Kātyāyana: 'If either on account of his having absconded, or for not having filed a reply, or for having resorted to a different pleading a man has (been declared to have) lost his case, his cause may be admitted (again), but not of one who has been defeated out of his own statement.'

The meaning is that the cause should be admitted as there is no extinguishment of the cause on account of the lapse of time due to his having run away. There if any other is defeated by the dismissed litigant, then a special rule has been stated by the Same Author: 'One who has been defeated owing to the texts for the *Uina*, for such a one the wise prescribe a retrial, but one who has been defeated by his own statement, for him no retrial exists.'

Yājñavalkya,<sup>2</sup> however, states in regard to the detection of a faulty litigant: 'He who shifts from (one) place to (another) place licks his lips, whose forehead perspires as also he whose countenance changes colour, (13), who has a stammering and incoherent speech, and talks inconsistently and too much, who does not respond to the speech or gaze of others, and who moreover, bites his lips, (14), who exhibits by his own movements a perturbation in mind, speech, body and action is defective and unfit to be a complainant or a witness (15)'. 'Lips i.e. the ends of the lips, 'lites' i.e. twists crooked, 'exhibits by his own movements a perturbation' i.e. by his natural tendencies thus is reduced to deformity.

Manu<sup>3</sup> also: "From the aspects, the motions, the gait, the gestures the speech and the changes in the eye and of the face also the internal (working of the) mind is ascertained i.e. of an offender. Thus for one

1 स्वभाववर्तिनश्च—M M Kano interpretes this as is defeated in accordance with texts laying down that result

2 Book II 13-15

even though known to have a vitiated mind, there is no punishment, nor a dismissal from the suit in progress, as these two have not been stated by the sages. Even the case of one who is not vitiated, by reason of a possibility of his having signs like these, and also because of the rule of caution laid down in regard to the texts describing a vitiated person, would in such a case not be rendered useless. 5

Those, moreover, who out of an apprehension of a defeat on a point, recede from the dispute before evidence has begun to be adduced, should be punished, so says Brhaspati<sup>1</sup>. "Those (litigants) who make a private arrangement with one another, when the plaint and the answer have been properly entered, and the deliberation (for a decision) has duly commenced, shall be compelled to pay twice the amount in dispute as a fine". 'Make with one another': i.e. in fraud of the king. Hence also Kātyāyana "Those (litigants) who after laying (their) information (in the court) mutually arrive at a compromise by receipt of payment of money, all these shall be liable for a double penalty on account of a fraud upon the king. 10 15

Thus then for those who compromise without a fraud, there is no penalty. Hence also Brhaspati<sup>2</sup>. When the plaint and the answer have been reduced to writing and the trial has commenced the two parties may be welded together like two hot pieces of iron. (11) When both parties are in suspense there regarding (the approaching declarations of the) witnesses and judges those litigants are clever who arrive at a mutual understanding while the uncertainty lasts. (12) When the evidence is equally strong on both sides, and law and custom are divided in such a case a mutual understanding between the two parties under the king's order is recommended". Those are clever who come to a mutual agreement before one (of the two) litigants is defeated on one point, this is the meaning. 20 25

Thus in the Smṛtyachandrikā texts relating to disputes.

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PAGE 50\* The Part relating to Proof—Pratyākāliṭapādaḥ<sup>1</sup>.

The Brhaspati : " Those, however, who stand for proof, to one of these should be assigned the burden of proof by the assessors, after taking into consideration the reply." " Of those," i. e. of those who appear in the court of justice ; ' to one ' i. e. to the plaintiff or to the defendant : the  
 5 ' burden of proof ' i. e. by evidence, should be determined by the members of the Court ; this is the meaning To that effect also Kātyāyana : " After the plaint has been properly revised and amended, and a reply made free from any fault, it is desirable that the adducing of evidence should be  
 10 caused to be done by the defendant or by the plaintiff even." The meaning is that either the plaintiff or even the defendant, whoever has to establish a fact, such a one, for the purpose of establishing that point, should write out the means of proof only after a proper Reply ( has been filed ). So also Yājñavalkya<sup>2</sup> : " Thereafter, the plaintiff should im-  
 15 mediately have written down the evidence by means of which the matter as alleged is ( proposed ) to be established." The meaning is that it is

1 प्रत्यक्षद्वेषपाद—Lit ( प्रति + आकलित )—Introductory. Yājñavalkya has declared a lawsuit to have four feet or parts ( चतुर्पाद ) ( See II 8 (2) ) Of these, according to him, the first part treats of the *Plaint* ( प्रत्यक्ष ), the Second, the *Answer* ( उत्तर ), the third, relates to the evidence and proof ( द्वेषपाद ), and the fourth the decision ( समाप्तिद्वेषपाद ). The present heading of प्रत्यक्षद्वेषपाद would fall under the third i. e. the द्वेषपाद. Yājñavalkya has not assigned a separate place for this, and the reason has been explained by *Vijñāneshwara* in his *Mitak-harā* on II 8 (2) [ See text at p 10 II 3-5, and English tr p 678 II 1-6 ] In substance, however, there is no difference. For after the pleadings have been placed on record the nature of the pleadings would determine the questions as to the burden of proof, the right to begin etc. Thus, as has been observed in the *Mitak-harā*, 'after the answer is received, the decision of the Counsellors should be given as to on whom the burden of proof would lie'. After the framing of issues, which again depends upon the nature of pleadings [ Cp. Civil Procedure Code Ord XIV and also Ord XVIII ] the Right to begin and in particular sects. 101-14 of the Indian Evidence Act Sect 102 runs thus : "The burden of proof lies on that party who would fail if no evidence at all were given on either side". प्रत्यक्षद्वेषपाद by the Members of the Court would be as to on whom and to what extent would the burden of proof lie, and also when it would shift [ See *Dharmakośa* Vol I, Part I p 211, where all the views have been collected and summarised with a quotation from स्वभाष्यपादा pp 78-79 ] Cp also *Brhaspati* न वदितुं शक्यं वादं किं वास्तव्यं दद्वेषे cited *Sarasvati Vilāsa* p. 105. and thereafter

ये तु निश्चिन कथं तेषां समर्थमात्राः । कथं तेषां समर्थमात्रादिकं वादं ॥

only after the establishment of a Reply that the disputant who has to establish a point should exhibit the means of proof

What is that (means of) proof? Anticipating this question, the Same Author "Evidence has been stated to consist of a writing, possession, and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence)." 'Ordeal,' such as the balance and the like. So also Narada<sup>2</sup> "Proof is said to be of two kinds, human and divine. Human proof consists of documents and witnesses. By divine proof is meant the (ordeal by) balance and the other (like) modes. The meaning is that the mode of proof by documents and witnesses and possession also is called human (evidence), as possession also is in relation to men. Hence also Bhaspati<sup>3</sup> "Witnesses, documents, and inference also has been declared to be the human proof of three kinds." 'Inference' i.e. possession as it leads to an inference of ownership.

The balance and the like also have been pointed out by the Same<sup>4</sup>. The balance, fire, water, poison and fifthly the consecrated water, the rice have, moreover, been declared to be the sixth the seventh the heated *Ukha*, the eighth has been stated to be ploughshare, and the ninth shall be religious merit. All these ordeals have been set out by the Self born.

Other ordeals however, have been set out by Narada<sup>1</sup> 'Swearing by the truth, vehicle, and the weapons, cows, seeds, or gold also as also (by) the Divinity or the revered ancestors, by (religious) gifts as also by meritorious acts.' The word *cha* also, is intended to include others also, such as touching the head of the son and the like.

Moreover these the balance &c. as also truth &c. by reason of their having been performed in the heaven by the Gods have acquired the designation of *divya* 'of the heavens' and *luta* 'of the Gods'. To that effect also Pitamaha. Since these have been used by the thoughtful Gods in regard to the lotus fibres for the purification of each other therefore these are known as *luta* by designation. Here it appears that by the force of the commencement these are known as 'of the Gods' by regard to the name. By pointing out as the reason 'used by the Gods' by the force of the conclusion, it appears that they are caused in their originating in the heaven. Divya by designation by reason of their being thus stated.

1 Book II 2\*

2 Intro II 2\*

3 Ch V 18

4 Ch V 4 Compare Narada I 2 2 (1)

3 Narada I 24



thereby both by the literal and the sense meaning by means of this clause the twofold designation of the balance has been stated like as in the case of *Āyā*, because of its flowing<sup>1</sup> career

- The designation of these also as oaths has been pointed out by *Nārada*<sup>2</sup> also 'The seven Rshis resolutely took an oath together with Indra in order to clear themselves mutually of suspicion, when each was suspected (by the rest) of having taken lotus fibres' *Vyāsa* also 'The Oaths affirmation by truth balance, and the like are in proportion to the matter (involved)' As to what has been stated by *Bṛhaspati* viz 'The balance and the like kinds of religious acts are declared to be the divine evidence of nine varieties there the supplement to be remembered is 'by the Self born, as the Divine evidence comes to be of many varieties (when considered) along with the truth &c stated in the Smṛiti of *Nārada* As for the separate mention of the ordeals and oaths by
- 10 **PACE 51\*** *Nārada*<sup>3</sup> viz 'When a witness does not exist for men setting up a dispute then one should investigate by means of ordeals, as also by the several kinds of oaths, that is with a view to point out that in serious cases, the word ordeal is (in) general (used) and not with a view to mention a difference in their meaning
- 20 Among the people these words are used as synonyms

- The expression 'when a witness does not exist' is inclusive by extension of the absence of written and other evidence (also) as *Yajñavalkya*<sup>4</sup> has stated the ordeals in his Smṛiti as to be in the absolute absence of human evidence of any kind whatsoever And hence also 'When witnesses are
- 25 available a wise man should avoid the divine evidence, when available and one employs divine means he loses it, in this text of *Katyāyana* the use of the word witnesses should be understood as an extended application of human evidence Also 'When a transaction has taken place during day time in a village or a town and when witnesses are available divine proof
- 0 is not admissible,' in this text of *Nārada*<sup>5</sup> also, the mention of a transaction being made during daytime and the like, should be understood to be intended as a prohibition of a divine test when human proof is available Hence also *Katyāyana* 'Even if the human proof is produced by the con

1 आनिगमन दाय्य Note the following passage marking out the distinction between आनय and दाय्य the two forms of सर्वं सर्वविहीनमात्रं स्वार्थं परीक्षितं न भवेत्

2 Ch I 244

3 Ch I 247

4 Book II 2\*

5 Intr II 29

tending parties cover only a portion of the subject matter, that should be accepted, and not the divine test, even if it cover in entirety (the subject matter)" The meaning is that when human evidence is available for only a portion of a particular point to be established or for a portion of a particular attribute, the divine test is prohibited. Since, the Same Author also says "That proof which leaving aside the substantial point, would establish unsubstantial points even though many, one should give up as devoid of substance"

Similarly of the contending parties even if one agrees to accept either the divine or human proof as may be offered by the other party if human proof is possible, that alone shall be the determinant, and not the divine test, so says The Same Author "If one (party) adduce human evidence, and the other resorts to the divine test, in such a case, the king should accept the human but not the divine proof. Thus the general rule is that when human evidence is absolutely unavailable then is the divine one"

The Same Author states an exception to this on some occasions "In trials concerning heinous offences of a long standing or in the case of assaults or slander, or concerning acts proceeding from violence the ordeal itself are the witnesses" This rule of option moreover has a reference to other than secret offenders. There, human evidence being impossible, the rule of option would not be possible. Hence also has been stated by the Same Author "Of secret offenders, perpetrators of heinous crimes however necessarily is the trial to be by oracles and by means of devices marks gestures, outward manifestations, and by the movements of their speech, eyes. The meaning is that in the case of secret perpetrators of heinous offences, however on account of their mask on their face, their form not being noticeable. In the absence of devices marks, and the like also there should be the ordeal for them and not merely on an absence of witnesses etc. only and to point out this has the text been continued again"

Likewise, in the case of the perpetrators of the most heinous offences, even though openly committed the trial is to be by the divine test only, so says the Same Author "In the case of heinous offences of all kinds one should conduct the investigation of the truth by means of oracles, even though witnesses exist so indeed (holds) Bhṛgu"

In regard to disputes relating to debts, Narada<sup>1</sup> states a special rule "When, owing to the negligence of the creditor, neither a document, nor

witnesses exist, and the disputant also denies the (receipt of) money, for such a one a threefold procedure has been prescribed " 'The disputant,' i.e. one who has accepted the money 'Procedure', i.e. the means for securing the money 'That also has been pointed out by the

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Same Author 'Demand at each period, continuance

of past transactions and the third an oath has been declared, by adopting these in order (the creditor) should secure (the amount) 'At each period a demand,' i.e. whenever the time for repayment had arrived 'pay me my money,' thus for three, four, or even five times, a

demand for repayment made in the presence of three parties and not contravened by the other side—this is the first means. In the absence of that continuance of 'past transactions,' e.g. at such and such a place, at such and such a time, whatever may be useful in relating a particular money liability, in connection with that transaction the loan was taken by you, with this and the like, the second means. When that even is un-

available, the third mode is an oath, this is the meaning.

This meaning moreover, has been pointed out by the Same Author 'also 'Although goaded on to his face, one who does not refute the demand, three, four, or five times, must pay the amount thereafter. Upon a refutation of the demand, however, one should treat him with the happenings regarding the balances of advances in connection with the place, time, matter, (mutual) relations, the amount, transactions and the like. If references to past transactions also be of no avail, then one should have it decided by the oaths only, by lie, water, religious merit and the like appropriate to the place, the season and the capacity (of the party)

Katyāyana also 'In regard to (a dispute about) a debt the means of proof have been declared to be a document or witnesses or (evidence as to) the balance of (past) advance or divine proof, out of a desire for the good of the people. Likewise in regard to a dispute of any kind says the Same Author 'By means of all the *pramāṇas* or by *Ietu* or even by an ordeal, should the King make a decision in all (kinds of) disputes, in the absence of all, by effort and never on any account otherwise Vyasa '

1 Ch I 236

2 युक्तेषु—Dr Jolly translates युक्ते as argument. It would appear that from the context here युक्ते has the sense of योजना—instrument and लक्ष is remnant असहाय also explains as दुर्द्वन्द्वस्य द्वावपि द्वावस्यविकल्पस्य वा युक्त्युद्देश

3 Ch I 237-239

4 The same text has been assigned to Katyāyana in Sarasvatī Vilāsa see p 107

states the meaning of the words *pramāṇa* and *hetu* :—“Documents, witnesses and enjoyment or possession have been stated to be the *pramāṇa* of three varieties, and the wise people know inference to be *hetu*, as also logical reasoning.” In this way, the meaning in substance is, when proof is not possible by a visible means (of proof), an invisible means may be resorted to and not otherwise 5

*Brhaspati* says that at times even, if not proved by the visible, the invisible must not be resorted to. “In regard to the first <sup>1</sup> or the third, the means of proof may be divine or human, but for an answer of the fourth kind, the document evidencing success together with the witnesses 10 The import is that in an answer of a previous decision by establishing either by witnesses or by the document of success, the disputant becomes successful (as) before. With this import also *Vyāsa* even “In (an answer of) a previous decision, by the document of success or likewise by (the evidence of) the Chief judge and the like the disputant secures success of what he had stated.” ‘Disputant,’ i.e. the opponent, as in such case he is the party who has to prove the point in dispute. Hence also *Brhaspati* : ‘In the (answer of a) previous decision or of a confession and avoidance, the defendant himself should establish the answer in an answer of denial, however, the plaintiff should establish his case as made out in the 20 plaint. The meaning is that in an answer of denial by reason of an absence of an admission, the plea made out in the plaint has the character of the point to be established, the contents of the plaint the plaintiff himself must prove. In the answer by a special plea, however, by the very admission of the statement in the plaint the burden of proof being shifted, the plaintiff has not to establish the statement in the plaint, but moreover, the part of the statement in the answer which plaintiff has not admitted, i.e. the special plea that itself is to be established by the defendant by means of proof. Hence also *Kātyāyana* : ‘After admitting (the statement in the plaint), if the defendant set up a different (and) stronger 25 plea if that indeed is established and not the other then he succeeds. Having admitted what was stated by the plaintiff in his first plaint, if the defendant set up in his plea another stronger : i.e. capable of crushing the statement in the plaint, such as payment back or the like, then that alone is to be established by him, by reason of a non admission by the plaintiff, 30 35

1 According to *Kātyāyana* an answer has four varieties : By pleading the truth (सत्य) admission or falsehood (सिद्धि) admission or confession and avoidance (अवयवकृत्य) and former judgment (अपराध). Of these the 1st and the 3rd

'not the other' i.e. the portion of the plaint admitted by the defendant, need not be proved by the plaintiff. The expression 'having admitted' is intended as an extended application, therefore, after stating that the averment by plaintiff is false, if a special plea is set up, even  
 5 then the special plea is to be established, as *Harta*  
 PAGE 23\* has stated "Of the two answers viz of denial and special plea, the special plea should be accepted as an answer"

Likewise, in an answer by admission of the truth (of the plaint), neither of the disputants has to prove anything, so says the Same Author.  
 10 'When however, a former judgment and a special plea are set up the defendant should exhibit proof, in a plea of denial, the plaintiff, but on an admission that will not be necessary.' The import is that the point to be established may be in the plaint as well as in the answer. Therefore, in the  
 15 case of an admission the judicial proceeding has (only) two parts. To that effect also *Kātyāyana* 'In an answer of denial, it should be known to have four parts, in an admission and avoidance likewise, and in the plea of former judgment also, (but) has two parts in the pleas of admission'.  
 20 Thus in the pleas of admission there being an absence of the allocation of (the burden of) proof or the like, the judicial proceeding is brought to a close at the end of the answer itself. In this manner also it should be understood that in the answers of denial and special plea, there may be divine and human evidence, in the plea of a former judgment human (evidence) only, in a plea of truth (of the plaint) none whatsoever. Hence  
 25 also *Katyāyana* 'In (a case of) slander, and also (a dispute) about land, one should not prescribe an ordeal'.

Indeed this Author himself has in a case of harshness of words, stated an ordeal e.g. in the text<sup>1</sup> "In cases  
 30 AN OBJECTION of heinous crimes etc. (The answer is) True, it was so stated, but that has a reference to cases of extreme violence, while this has a reference to petty cases of harshness, thus there is nothing contradictory. Regarding land' is intended as indicating by an extended application an immovable. Hence also *Pitāmaha*  
 35 "In disputes regarding immovables the ordeals should be avoided, by witnesses, or by a writing as also of by (the evidence of) possession should these be established". Here, it should be understood that in the absence

of human (evidence), by *hetu* should be the decision, when that is not possible (then) by the king's command

So also the Same Author, in regard to the rule of the ordeals at some places ✓ In accusations for heinous sins, as also for the misappropriation of a deposit by the ordeals should the king investigate the cause even if witnesses exist' *Katyāyana* also 'Where witness evidence is equally balanced, even there also, should one investigate by means of the ordeals Also in a dispute regarding loss of life even if witnesses exist the complainant should resort to an ordeal, in such a case one should not interrogate a witness" *Brhaspati* also 'In regard to a document, as also in regard to the statement of witnesses, where a doubt is felt, as also an inference is doubtful, in such a case, the divine evidence is the clarifier' 'Inference *anumānam*, i.e. possession, as also the employment of a burning faggot or the like *Vyasa* also "This document has not been executed by me it is false, and has been caused by another having (thus) discarded that document the decision as to the fact should be by an ordeal' The meaning is that in regard to the point to be decided one should make the decision by (a resort to) an ordeal *Kātyāyana* also Where a document is fraudulent, and where it has been reported to the king as such, in such a case the king occupying the seat of justice should decide by (a resort to) an ordeal Likewise the Same Author states the rules for investigation at some time by a document, at times by possession and at times by witnesses, when possible Whatever has been reputed to be the established usage of the *śāgī* *śrenis* *ganas* and the like of that the means of proof is a document and neither an ordeal, nor also witnesses In regard to the making and enjoyment of a passage through a door, a watercourse and the like possession or enjoyment alone has preponderance, and neither a document, nor also witnesses (Also) In regard to gifts promised and not given, and also for a decision by a master towards the servants in regard to rescission of a sale or where having purchased (a thing), one does not wish to pay the price, or in gambling and prize fighting when a dispute has arisen witnesses have been declared to be the means of investigation, and not an ordeal nor also a document .

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The settled rules of evidence thus stated must be carefully observed by the investigators So says *Narada* <sup>1</sup> Those invested with legal

1 Cl I 68 The original text in the *Narada Smṛti* is as follows

प्रमाणानि प्रमाणरूपे परित्यज्यादि वाक्ये । सीद्धा न हि प्रवेष्टुमि प्रवेष्टुमि

and the translation given above is a record of the original text in the *Narada Smṛti*

authority must pay strict attention to the (various) modes of proof. For indeed, things which have to be proved fail (to be established), if the prescribed modes of proof are not attended to'. The meaning is that since those who (have to) adduce proof (are likely to) fail, therefore those expert in determining the burden of proof should decide by whom, and which mode of proof, should be exhibited.

Here it has been stated by some wisewomen<sup>1</sup> that the exhibition of a document etc. is not (to be regarded as) a restrictive mode of proof in regard to immovables, but only as an ordinary mode, otherwise upon the loss of a document on some account there would be an absence of a decision. That is not correct. Although it is restrictive a decision may be reached by logical reasoning or under the orders of the king. Hence also *Paṭāmaha* "Where no document exists, nor (proof of) possession nor even witnesses, in such a case an ordeal need not be resorted to, there the authority is the king. Those disputes indeed of doubtful aspect which cannot be decided, for those the king is the authority, since he is the overlord of everything". Hence also the visible and invisible modes of proof have been stated by *Vyāsa* "In the absence of these, the wise men regard the king's order as decisive. The meaning is that when means of proof are not available inherently or on account of a (rule of) prohibition, a decision may be reached by the king's command".

Thus in the *Smṛticandrikā* the part relating to the adjustment of proof

Now the Part relating to evidence *Kṛiyāpādaḥ*

There *Bṛhaspati*<sup>2</sup> "After having heard the plaint and the Answer, the party for whom the proof is ordained by the councillors, that one should completely establish by means of documents and the like, what was stated on affirmation". Proof is evidence. *Nārada*<sup>3</sup> also "When after the first complaint and the counterstatement have been completely reduced to writing literally in detail, the disputant in the third stage should demonstrate (it) by proof. 'The first complaint' is the plaint, 'The counterstatement' is what is written by way of defeating the first complaint, in short 'the answer'. 'The third stage' is the part relating to proof, when in that, the evidence is the means (of proof). Thus, the meaning is this. After the three parts consisting

of the complaint, the answer, and the determination of the burden of proof, the plaintiff should 'demonstrate by means of evidence' : *i e* establish his case by means of evidence

Vyāsa states the meaning of the words 'case' (*Karya*) and 'evidence' (*Kriya*) 'The 'case' is said to be that which has to be established, while the means of (proof) is declared to be the evidence, that, moreover, should be known to be of two varieties, human' and 'divine, likewise' 'Means' *i e* means of proof Brhaspati<sup>1</sup> also states a division of proof "Of two varieties, indeed, have been declared the means of proof, the human and the divine likewise, each one (of these) has been (further) variously subdivided by sages conversant with principles" Katyāyana also "Of five varieties may be the divine; the human has been declared to be of three kinds The expression 'Of five varieties' is not intended as restrictive, as other varieties such as the rice, heated coin, and the like have been noted in other Smṛtis, while the expression 'of three varieties' is certainly restrictive, as there is no incongruity in other Smṛtis Hence also the statement here is 'has been declared to be of three kinds'. As for what,

moreover has been stated by Narada<sup>2</sup> "Documents and witnesses also are declared to be the two methods', that is not intended as restrictive of the number for were it so, there would be the incongruity of contradiction with his own text<sup>3</sup> viz "Documents, witnesses and possession are declared to be the two traditional modes of proof Therefore it should be understood that the text 'are declared to be the two traditional means has been stated for indicating that the plural number is intended as applicable for the two<sup>4</sup> others

Thus in the Smṛtichandrikā the Part relating to Proof

1 Ch V 17

2 Intr I 3

3 Ch I 69

4 बह्वचनमित्येवो द्वेति वक्तु—With a view to express that the plural number is in regard to the other two ; *i e* लिखितं and साक्षिण The meaning is the orbit of युक्ति is very limited not large, while documents (लिखितं) and witnesses (साक्षिण) have a wide range to cover Therefore, although the text says two rules, the meaning intended is the two rules being (1) लिखितं and the other (2) साक्षिण prominently in view युक्ति having a very small orbit is of little importance to count as a major rule द्वेतिने is not to be taken therefore as a restrictive or limitative expression द्वेतिने ; *i e* two prominent means generally to be resorted to Therefore the fact is that the means of proof are three but of the other two having a preponderance over the other ; *i e* the third and therefore a wider orbit द्वेतिने has been stated as merely indicative and not restrictive



brief description of the property and of the Act ' A command which contains a (recital of the) connection of the Act and its motive cause, one of that description 'Containing a brief description of the property and the Act,' is accompanied with a brief statement, from the beginning, of the transaction Yajñavalkya 'states the matter to be caused to be written on the copper plate and the like "Having caused to be written (the names of) his own ancestors as well as 'himself' the lord of the earth the extent of the accepted donation and a detailed description of the donated property.' In the beginning having caused to be written out in consonance with usage the (invocation of the) blessings of the Lord of prosperity having the body of the (great) boar who had lifted up the entire earth, as bestowing a boon ' his own ancestors, the three in respective order : e the great grandfather, grandfather, and the father by name introduced by a description of their qualities, such as bravery and the like, and himself the fourth, the extent by measurement and of the accepted donation That which is accepted as a donation is an accepted donation, the land etc, the corrody also, the measurement of that : e the extent, 'Extent of the accepted donation, : e, the boundaries of the land etc to be donated Vyāsa also : "Containing the year, the month, the half of it, and the name of the king, the caste of the acceptor of the donation, together with the gotra and the scholastic name ' The meaning of the latter half is that such (things) should be caused to be written is would enable a complete identification of the donated property, and the caste, family, the scholastic branch and the like also Likewise, the Same Author also states other things also to be caused to be written "The place, the family ancestry also, the country, the village connected, the Brāhmanas and others also respected and holding authority, one should write, the members of the family, prominent members of the writercaste, servants, and doctors (extending) as far as the *mleñchha*, *chandāla* and the border men, addressing all (thus) "For (securing) the religious merit of the mother, the father, and of oneself also, to one the son of such and such, this gift has been donated by me to such and such a one the co student (of such) "Irrevocable, unrecoverable, irrevocable of whatever may occur in future, (continuing) equal in extent in time to the moon and the sun, and descending hereditarily to the son grandson and their descendants, maintaining the heavenly abode for the donor, and the preserver, and involving hell to the person taking back, one

perpetuity " 'Bearing the date', : c containing the donation particularised by the ( name of the ) year and such other particulars To that effect also Vyāsa "This 'has been understood by me' so written by the donor, containing important words, and likewise imprinted with the ( name of the ) year, month its half, the day and the 5

PAGE 57\* Royal signet In this manner should one write the document containing the Royal Edict "

Similarly, the Same Author proceeds to discuss a Decree <sup>1</sup> (or document of success) "Having himself investigated the disputes or upon the report from the Chief Judge, thereafter the king should give a decree for 10 general information "

To whom should he give ? Anticipating this question, the Same Author says 'One by whom the ( right to ) movable as well to the immovable (property) has been established to be his by means of evidence, who was placed in a doubtful position on account of an allegation in regard 15 to a portion, and duly comes out successful, to him should be given by the king the Decree duly confirmed Brhaspati<sup>2</sup> also 'Preceded by the first and the final pleading and concluded by the decision when a king gives a writing to the successful party, that is stated to be the Decree or (*Jayapatra*) " 'Preceded by the first and the final pleading, (this expression) is 20 indicative by implication of a concluded trial Since says the Same Author<sup>3</sup> "What had taken place in the judicial proceeding, such as the first complaint, the Answer and the like, followed by evidence and the decision, all that should one write in the *Jayapatra* Vyāsa also "The first Complaint, the Answer, the part relating to proof, the detailed consideration of these, oral evidence, the Smṛti Texts a decision reached in concordance with the assessors, one should write all this collectively and briefly, in the *Jayapatra* 'The part relating to proof', : c the part where the proof is sifted and examined in short the part known as the *Pratyākha*, or the part in which the burden of proof is determined 'Oral evidence', 25 : c statements of witnesses, 'concordance with the assessors', : c without transgressing the assessors, 'briefly, : c in a shortened form 30

Kātyāyana also "The statements of the plaintiff and the defendant, the affirmation, the statement of witnesses likewise its decision also was determined by himself, this should be written distinctly entered in 35 the respective order in the document The expression 'in respective order' has been expounded by the Same Author also The statements of

1 जयपत्र—see note on page 100 above

2 Ch VI 4

3 Ch VI, 3

The *Āmāpātra* (mandate) and the *Prāyāpātra* (an ordinance) these two have been pointed out by Vasishṭha<sup>1</sup> "That by which some duty has been ordered to be performed by the feudatories, servants, the national guards, and the like that is called an *Āmāpātra* (mandate) That by which a duty is communicated to the sacrificial priests the chief officiating priests, the preceptor, as also to those who are entitled to (be treated with) respect, is the document issued for their information" Brhaspati mentions even another royal deed of favour called the *Prasāda lekhyā* 'Where a king being pleased with the service, bravery etc (of the doer), proffers a region or the like by means of a document, that indeed is a *Prasāda lekhyā* (deed of favour) " Therefore the statement that a Royal document is of five varieties or of four varieties should be regarded as made through inattention

The peoples' document has, moreover, been explained by Vyāsa "The well known local writer should write out a people's document, containing the (names of the) royal family in their order, and the year, month, half of a month, and the day' : e containing (these) is the context 'Day' : e the day (of the week) Other (details) also should be caused to be written, so says the Same Author "One should write the name and the caste of the creditor and the debtor preceded by the father's, the variety of the property, as also the quantitative measure, and the rate of interest as agreed to by both" The expression 'agreed to by both &c. is qualitative of the property and the like also. Hence also Yājñavalkya<sup>2</sup> "In every transaction where an amount has been agreed to by mutual consent, there should be made a writing about it with (the attestation of) witnesses (thereon) and preceded with the creditor" 'Preceded with the Creditor' : e with the name of the Creditor With witnesses', : e containing the names of persons who are intermediaries and conversant with the transaction or the amount agreed to Similarly, as many particulars should be and entered into the document as may be helpful for a definite appreciation, as to the time, the creditor, the debtor, the witnesses and the like So says the Same Author<sup>3</sup> "Containing among other things, the year, the month, half of it, the day (of the week), the castes, and the names of their own *gotra*, as also the scholastic title, and the names of self and father 'The scholastic title', e g 'Kāṣṭha of

<sup>1</sup> Appendix Verses 17-18

<sup>2</sup> अतिप्रधानः सः : e the officer whose function is to write out documents regarding places of importance

<sup>3</sup> Book II. 84 Collect p. 891

<sup>4</sup> Book II. 85

- the Rgveda' and the like qualifications in connection with the (particular) *Sākhā*. The father's name of oneself, as also the father's names of the creditor, and the witnesses. By the use of the expression 'and the like' are included the relatives, the day etc according to the usage of the country.
- 5 Hence also Vyāsa 'In accordance with the usage of the country containing the transaction, the loan, the acceptance.' 'The transaction according to the usage of the country', : e it should be done in pursuance of the local usage. 'The loan' : e the advance *Nārada* also 'A document, moreover, should be caused to be made with witnesses on, which is not in
- 10 disregard of the rules about the sequence of ideas and words, which is in conformity with the state of the usage in the country, and which is perfect in all particulars' *Varaṇṇa* <sup>1</sup> also "Having entered (in it) the time, the king, the place, the residence also, the transferor, and the transferee, and containing the father's name, the caste, one's gotra the *Sākhā*, the
- 15 money etc with the quantity, the interest, the signature of the transferee and the witnesses also cognisant of the contents' *Yājñavalkya* <sup>2</sup> 'After the contract has been completed, the debtor should enter his name with his own hand (at the end) with the words, "what is written above has the assent of me the son of such (and such) a one" By saying 'above', the Author
- 20 points out that after the words (stated) before have been written, below these should be placed the words in his own hand, (the word) 'Debtor, is intended as indicative of witnesses also To that effect the Same Author <sup>3</sup> also "The witnesses also, should subscribe in their own hand their fathers' names
- 25 before theirs, thus, 'here, so and so am a witness', these witnesses should be equal' Those who have been entered here in the document as witnesses, these also should each write, 'so and so the son of so and so, a witness in regard to such and such a matter'

- These, moreover, should particularly be even in number, such as
- 30 two and the like and not uneven in number, such as three or the like The rule as to the number of witnesses has been indicated by some one contrarily by assuming an implied negation That should be ac

<sup>1</sup> See Bombay Sk. Series Appendix p 85 Verses 23, 24 also *Vijñānitodara* and *Apararka* This passage is not in the text as printed, but I 136 contains a similar provision Cp *Yājñavalkya* also Book II 85

<sup>2</sup> Book II 86

<sup>3</sup> Book II 87

<sup>4</sup> अक्षरद्वये— between the word ते and समा Thus according to this view the text should read ते समा This sign is called अक्षर, so that when the clause is split into २३ or syllables, it should read ते असमाः

cepted only in a region where the usage is like that alone; not elsewhere, as it would be incongruous. The plural number in the expression 'witnesses' is in reference to a matter (which is) very important. The debtor, the creditor, the two witnesses, and the writer likewise, a document should be made with (the writings of) all these together, and not otherwise", since in this text, two witnesses have been stated by *llārīta* in all kinds of documents. In this way, moreover, in a document prepared by another, as there are five persons viz. the debtor, the creditor, the two witnesses, and the writer, it is a document with five entered in it. This is the practice among the people. When, moreover, the number of witnesses is larger, such a transaction should be understood to be of a minor character.

In regard to documents of all kinds whatsoever has been stated by *Vyāsa* also: "The debtor, his hand together with his name, together with two witnesses with the (name of the) father." Therefore, the rule about even number, such as two and the like should be resorted to without (any) conflict with the usage of the country.

When, however, a witness & a debtor is illiterate, then says *Nārada*: "Where a debtor is illiterate and so also the witness (who is illiterate), he should cause his declaration to be put in writing by another witness in the presence of all the witnesses. One knowing a foreign script should also write himself alone, as he knows the script, vide this *Smṛti* of *Kātyāyana*; "All the scripts of the people should be entered into a document."

After the autograph of the witness, says *Yājñavalkya*: "Being desired by both (the parties) this was written by me so and so, the son of so and so", thus at the end (of the document) should the writer then subscribe". *Vyāsa* also: "The writer should subscribe at the end thus: 'By me, so and so, the son of so and so, requested by both (the parties)—his own name in his own hand'". This is the rule regarding a peoples' document as stated by *Vyāsa* 'At the end' i.e. of the document.

A document thus described is of eight varieties; so says the Same Author. "An ancient document (*chāṭa*), a document in one's own hand (*chāṭa*), likewise that which is called (*uj-jatī*) an acknowledgment or receipt, a document of pledge (*chāṭa*) is the fourth; the fifth is a sale deed (*chāṭa*), the sixth is known as a document of wages

1. Not found in the published edn (see however *Mitākāra* p. 226, ll. 26-27).

2. Book II 24.

(*sthūpatraka*), the seventh is the document of peace (*sandhipatraka*), and the certificate of purification (*Vissuddhipatraka*), thus a people's document (*Laṅkāla*) has been declared to be of eight varieties." Here the number is not intended to be particularly stressed as a (*tribhāgapatra*) document of partition, and the like also, are (regarded as) peoples documents

There the *Sangrahakāra* states the characteristics of the ancient document (*Chiraku*) "A document is called ancient (*chiraka*), which is written by ancient writers of the town, nominated by the plaintiff and the defendant, regarded as the best available, with their own names preceded by the names of the fathers and the like containing the names of each of the plaintiff, the defendant, the witnesses, and (the signatures) in the hands of the plaintiff, the defendant, and the witnesses, containing clearly the information, with characteristics as stated in the *śūtras*" "Regarded as best," &c highly praised

*Kātyāyana* moreover, describes the document in one's own hand (*śāhastā*) "That which was written by the acceptor in his own hand, and which is without any witnesses, that is known as a 'document in his own hand,' and declared by the wise as (good) evidence" In the same manner, a document written by the giver, and acknowledged by the acceptor, should be known as a document of acknowledgment (*abhyupagata*) *Nārada*<sup>1</sup> states a document of pledge (*ādhipatra*) "Where after accepting a pledge, the owner lends his own money, the document which is executed at that time, that is called a document of pledge"

In the case of a document for a second pledge *Prajapati* states a special rule "When the creditor creates another

PAGE 60\* pledge with the same money, (then) having executed a document of that pledge he should deliver back to

him the first document."

A sale deed (*krayapatra*) has been stated by *Pitāmaha* "When an article is purchased, that which is executed for the publication of the purchase by the seller and assented to by the purchaser, should be known as a sale deed (*krayapatraka*) The documents of usage (*sthūpatra*), and others have been stated by *Kātyāyana* "The document which is intended as evidencing the usage of men versed in the four Vedas of a town, of corporations of guilds and of the inhabitants of a town is called the document of usage (*sthūpatraka*) That document which records what happened at an accusation made before all the best of

1 Not found in the published edition

the people, is called the document of peace (*sandhipatraka*) When an accusation has been got over after an expiation was performed, the document which is given by the people attested by witnesses is called the document of purification (*visuddhipatraka*) "

Brhaspati <sup>1</sup> also mentions the divisions of documents " A document of partition, gift, purchase, pledge, agreement bondage, debt, or of like (transactions), (thus) of seven varieties are Peoples' documents, the royal edicts are of three kinds " Here also no (particular) number is intended to be stated, more documents than these having been pointed out; hence also the expression 'and the like' has been used, otherwise, the seven-fold varieties having been established by the enumeration itself, the use of the expression 'and the like,' would be meaningless By that alone, this is understood, that the number of (the kinds of) documents is not intended as restrictive Therefore, there is no contradiction with the texts containing various enumerations

The Same Author <sup>2</sup> expounds the document of Partition and other kinds ' When brothers become mutually divided according to their own wish, and make a deed of division, that (document) is called a Partition deed When after having made a grant of land, one executes a deed wherein he makes it endureable as long as the sun and the moon continue, and to be irreducible, and unresumable, it is called a Donation deed When after having purchased a house, a field, or other (property), one causes a document to be executed containing an exact statement of the proper price paid for it, it is called a Purchase deed When, after having given as security movable or immovable property, one executes a deed stating whether the (pledged) property is to be preserved or used, that is called a Mortgage deed When (the people of) a village or province execute a deed of mutual agreement, (the purpose of) which is not opposed to the interests of the king, and which is for the purpose of *dharma*, that is called a deed of Agreement (*Samrit*) Being reduced to destitution in regard to clothes and food, when one executes in a wilderness a document stating 'I will do your work,' that is termed a deed of Bondage (*dāsupatra*). When after having taken money at interest, one himself executes a deed, or causes it to be executed, that is called by the wise a Debt bond (*ṛnalekhyā*). "

Kātyāyana also mentions another *laukika* or Peoples' document : ' When a boundary dispute has been decided, a document specifying the

1 See Sacred Books of the East Vol XXXIII p 304 Ch VIII 4

2 Chapter VIII 5-11 p 305

boundaries has been ordained (to be executed)" Yājñavalkya<sup>1</sup> also

After having paid the debt, the document should be caused to be torn or another should be caused to be made for (evidencing) the acquittance

Marichi states the occasion for a document "Upon a sale or  
5 mortgage of immovable property, as also upon a partition, or of a donation also, one should secure a completion (of the transaction) by a document, and an avoidance of a disagreement also" 'Mortgage', i.e. pledge. The first word, moreover, is intended to include property dealt with in a transaction of loan or the like. 'Avoidance of a disagreement', i.e. even  
10 after a lapse of time, the transaction entered into should be placed above dispute

Thus moreover, in regard to immovable property and the like, having completed an indisputable transaction the details as to the royal family and the like other matters may be entered or deleted, since these  
15 have a visible purpose, therefore in a document of gift or the like the creditor, debtor etc. need not be written, nor also in a document of payment of a debt etc., the acceptance of a donation etc. In this way, in other documents also should be understood what is to be written, for a document has a visible purpose

Hence where a document the contract under which has not been per  
20 formed becomes incapable of enforcement or is destroyed another document must necessarily be got executed. Therefore also says Yājñavalkya<sup>2</sup> 'If a document is in another country, or is badly written or is lost so also if it is stolen, likewise if it is torn burnt or cut asunder, another  
25 should be allowed (by the authorities) to be made (in its place)' 'Is in another Country', i.e. lying in a place from which it is absolutely impossible to be brought over, badly written', i.e. the letters in which cannot be deciphered, torn, i.e. cut into two, 'cut asunder' i.e. tattered

Katyāyana also "When a document is broken by dust, is burnt,  
30 or has holes formed in it or has passed away  
PAGE 61\* another document should be got executed also when it has been blurred by perspiration' 'Passed away,' i.e. misplaced or taken away, 'blurred,' i.e. wiped off

As to what, moreover, has been stated by Nārada<sup>3</sup> "When a docu  
35 ment has been placed in another country, or burnt, or badly written or stolen, time should be allowed if it exists still if it be not in existence, the



evidence of those who have seen it, decides the matter," that has a reference to a debtor who is prepared to pay off the amount at that very time, for in such a case, there is no purpose in making another document. Giving of time is for the purpose of the document being brought over, the determination of an adequate time, for the 'evidence of those who have seen it' : *i.e.* the meaning is, the knowledge of those who had seen the contents of the document, with the object of proving the amount, that should be done. Thus, moreover, even when it is not possible for the document to have been torn, it should be done with a view to dispense with the evidence of witnesses. So also by way of publishing the payment back, a document of repayment should be taken. If, however, the money, is to be paid back after an interval, another document should be got made. Hence also has it been said by the Same Author<sup>1</sup> "If a document is split, or torn, or stolen, or effaced, or lost, or badly written another document has to be executed, this is the rule regarding documents."

Thus in the *Smṛtichandrikā* the discussion about Documents

#### Now the Examination of Documents—*LekhyaParikshā*

There *Katyāyana* "The king having issued summons<sup>2</sup> for evidence, should examine according to the rules of justice, documents in accordance with the custom about documents, and witnesses in accordance with the usage about witnesses. 'Custom about documents' such as distinct letters, sentences and the like. That also has been pointed out by the Same Author "A document which contains a proper formation of letters and sentences, which is unambiguous in which the letters are clear, which is not wanting in the order of the marks and the stops, attains validity. *Kṛiyā*, 'form' : *i.e.* proof, 'mark, : *i.e.* the signet, that is in the Royal grant only."

To that effect *Nārada* "A document which contains the king's own hand and also is marked with his signet is declared a Royal document, which is (regarded as) evidence in (regard to) all matters." So also the Same Author<sup>3</sup> says in regard to a people's document "A document, however, has been declared to be of two sorts, written in one's own, or in another's (hand), unattested<sup>4</sup> or attested, the validity of both is according to local usage." The meaning is that the validity of both these kinds, depends upon local usage : *i.e.* in accordance with the custom of the country

1 Ch I 146

2 कियौ समद्वय another reading is राजाज्ञया समद्वय

3 Ch I 135

4 When in one's own hand it need not bear attestation; while the other requires it

In regard to the document written in his own hand, however, Yājñavalkya<sup>1</sup> states a special rule "Even though without witnesses, a document which is in one's own hand, all that is regarded as evidence, except when it is caused by force or fraud" From the use of the word  
 5 even, in the expression 'even though' it appears that a document in one's own hand even may be attested That written by another, however, can be evidence only if it is attested To that effect, moreover, Pitāmaha  
 "Consented to by the two disputants, and bearing the attestation of the writer, such a document is regarded by the wise as (good) evidence in all  
 10 matters" Kātyāyana also "That which is in accordance with local usage, which contains the year month, fortnight etc and the rate of interest, and is marked by the hands of the debtor, the witnesses, and the writer, is called a document"

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The use of the word interest is indicative, by implication, of a pledge  
 15 Hence also Nārada<sup>2</sup>: "That which is not adverse to the custom of the country, the contents of which answer to the rules regarding pledges (and other kinds of security), and the sequence and letters in which are unobscured, such a document is regarded as (good) evidence" 'Distinct are made in which the rules about pledges', i.e. about the procedure regarding a  
 20 pledge, such a document, of this aforesaid kind The meaning is that that document which is in accordance with the condition of the sequence and the letters being unobscured that is evidence i.e. even after a lapse of time will yield knowledge about real facts It is obvious that that which is not of this character is no evidence

25 ~ Still also with a view to clarity, says Kātyāyana "When, however, the letters in it are fallen away from (their proper) place, are not in the (proper) line, are ambiguous, and are deflected from their characteristics, and are so placed that document should be regarded as a false document Also that which is opposed to the custom of the  
 30 country, which is ambiguous, which is devoid of (the proper) order, and which was executed not by the owner, is vitiated as also which does not contain the matter in hand"

Harita also "That, moreover which has been full of (the marks of) the crows<sup>3</sup> feet, such a document may be regarded as invalid, as also the composition of which is devoid of the dots (*bindu*) and cross marks (*mātrā*)

1 Book II 89

2 Ch I 136

3 कलकत्ता : i.e. full of correction marks like (A) such marks are made when any addition or correction is to be introduced into a document

as also that which is torn" **Brhaspati**<sup>1</sup> also 'That which looks fresh (though) executed a long time ago and dirty, or intended for a very short period only, which is torn, or has its letters blurred, such a document shall be regarded as invalid. A document will not be held valid which was executed by a dying individual, or by an infant, or by one under a terror or one under the influence of vice, or (executed) at night under deceit, or compulsion' **Narada**<sup>2</sup> also 'That which was executed by one intoxicated, or under an influence, or by a woman, or by a minor, or under compulsion, such a document will not be regarded as evidence as also that which was made under suffering or by an intoxicated person or by one under fear or fraud' **Katyâyana** also "A document which was executed by one intoxicated, or by one under fear of an obstruction as also by a lunatic, or by one under trouble, and that which was executed by women, minors, or by persons not independent, will not be regarded as valid' The collective sense of the texts of **Brhaspati** and others is that what was done by a dying person or the like, will not be admitted as reliable evidence on account of a suspicion about their genuineness

In a similar manner, a defect in witness evidence will not be regarded as reliable evidence. To that effect also **Vyâsa** "Where a witness has been entered who is tainted or is vitiated by his acts that document is declared as invalid, or even where the writer also is of such a character". **Katyâyana** also "A document may be (regarded as) invalid on account of a defect in the witness, or of the writer, or on account of the fault even of the creditor, as also of the debtor"

Here, those faults which are concealed, should be declared by the disputant, those moreover, which are apparent, by the members of the Court, so says the **Same Author** "Indeed those faults which exist in the evidence should be declared by the disputant while the apparent ones by the members of the Court at the time by pointing to the rules of law' 'In the evidence', i.e. in that which was declared as evidence, at the time, i.e. at the time of the investigation. The faults which, however, are declared after the lapse of (the proper) time do not come in the way of their evidentiary value, so says **Brhaspati** 'Whatever defects in the documents, as also in the witnesses, have been stated in the *Smritis*, must be declared at the time (of the investigation) of the dispute, if declared afterwards, these should not invalidate' The meaning is that those which are

1 Ch VI. 25

2 Ch I 137.

declared afterwards : *i. e.* after the conclusion of the examination of evidence, one should not invalidate

Kātyāyana states the manner in which secret faults may be expressed  
 “The faults should be so declared that the witnesses, the writer, and the  
 5 executant may be found to be false, a document becomes invalid when  
 these are vitiated” Or, it may be brought out that it

PAGE 63 \* was not written by the writer whose name it bears or  
 seen by the persons whose name it bears as witnesses

So says the Same Author “It was not written by the writer, nor likewise  
 10 was it seen by the witnesses, when such declaration is made by the defendant,  
 the document is declared to be false” “Declared” : *i. e.* as a fact For, the Same  
 Author again “Not by an averment (merely) that it is false, but by the  
 defect alone should evidence be attacked as faulty, for a false accusation  
 a party becomes amenable to punishment, and he loses his cause also.”

15 In this manner if the faults as pointed out by the accusing party  
 disputant are found to exist, those defects, the president of the court should  
 communicate to the other side, to that effect also the Same Author “In this  
 manner where a document has been challenged as invalid before the  
 king, it should be considered, and after having deliberated along with the  
 20 Brahmanas, one should investigate into the faults of the document”

There, if these defects are not removed by the other (side) then the  
 document is (regarded as) invalid, if removed it is (to be regarded as)  
 not invalid, so says the Same Author “That by which the witnesses,  
 the writer, and the executant become vitiated, by the same cause is a  
 25 document regarded as invalid, if these are faultless, one may declare its  
 validity.”

In regard to a document which has not been admitted, the validity is,  
 however, established by the consent of the debtor, if not, not, so says the  
 Same Author “A document written by the creditor in his own hand  
 30 without a witness, becomes invalid if the writer does not prove it to be  
 (properly) executed” The meaning is that if the writer (*karti*) : *i. e.* ‘the  
 creditor’ ‘does not prove’ : *i. e.* does not establish that it was written  
 under the consent of the debtor, then a document repudiated by the debtor  
 saying ‘I do not know,’ is regarded as invalid

35 When, however, he repudiates what was written in his own hand,  
 then from the evidence of witnesses entered in it, or from such other  
 means, it should be determined whether it is invalid or valid To that  
 effect also, the Same Author. “If a debtor denies his own handwriting

entered in a document, he should be confronted with the witnesses in the document, or with the opinion of the writer "

When it is attacked as not having been made at all, the decision should also be in the same manner, so says the Same Author "In disputes as to the execution or non execution, the decision regarding the document should be by (means of) witnesses" The use of the word 'witnesses,' is (only) indicative<sup>1</sup> as in the text "When a document has been repudiated, the claimant may cite those who are entered in it," has been stated by the Same Author.

As to what has been stated by Nārada<sup>2</sup> "In regard to a document which has been doubted, the authenticity may be established by the examination of his own writings etc., the tenor of the document, peculiar marks, circumstantial evidence," as also what has been stated by Yājñavalkya<sup>3</sup> viz "The genuineness of a doubtful and disputed document may be established by (comparison with other) documents and (other writings) of the party (written) in his own hand, and by similar other means, as also by presumption<sup>4</sup>, by confrontation of parties, by direct proof, by marks, by previous connection, by (a probability of) title, and by inference,' that has a reference to a document which has no witnesses on it, and which was written by him in his own hand, as there is an absence of witnesses and the like means for (arriving at) a clear decision Hence also Hārta "Upon a doubt (arising) about the hand-writing of the debtor whether it was his own, when he was alive or was dead the decision regarding such a document is reached by (a comparison of) other documents executed in his own hand " 'Executed in his own hand', this expression is indicative of proof etc referred to before

Where, however, there exist the means for a clear decision, such as witnesses etc. as e g. in documents written in his own hand, and having attesting witnesses, there a decision may be reached by a comparison with the other documents which are a means for arriving at a clear decision So says Katyāyana "Direct evidence can never be shaken by presumptive evidence, therefore a decision about a document

1 : : not restrictive, thus not only witnesses, but others also who are likely to be conversant with it may be cited to prove it

2 Ch I 143

3 Book II, 92

4 In the text of Nārada the expression is *निष्पत्तिरिति* while in Yājñavalkya's it is *निष्पत्तिरिति* दृष्टव्यमिति The translation in Nārada's text is as has been interpreted by Ashāya while that in Yājñavalkya according to the interpretation by Vyāsanavara in the Mitakshara

which is challenged as false can be reached by the statements of witnesses ; for, indeed, a party is likely himself to challenge a document with the object of securing the amount of (a successful party upon) a decision ' The meaning is that by the statements of witnesses, and not, moreover, from the debtor's statement, as there is a possibility of his having a wrong motive. With this very object has been stated by Nārada<sup>1</sup> also. "A document shall be annulled by a document alone, and an attested document by witnesses." The meaning is that a document which has no witnesses etc should be examined by documents etc similar to it

As for what has been stated by the Same Author<sup>1</sup> : "A writing should be known to be superior to witnesses, but not the witnesses over the document," that has a reference to a document which has no (attesting) witnesses entered in it. Therefore, it should be understood (as the conclusion) that where there are witnesses, the decision shall be by the evidence of the witnesses etc entered in the document, that of a document not having witnesses, by a (comparison as to) similarity etc with his own handwriting in other documents

How, then, can a decision be reached in regard to a document the witnesses etc on which are dead? so says Kālyāyana

PAGE 64<sup>a</sup> "Now if the writer be dead, as also the witnesses, then undoubtedly their validity should be determined by (a comparison of) their own handwritings and the like " The meaning is, 'of these' : *e* of the deceased witnesses etc, 'by their own handwriting and the like' : *e*. by their own *gotra*, *varna* and other similarities well established in other documents. Vishnu<sup>2</sup> also "Where a debtor, or a creditor also, a witness or the writer also be dead, there, that document should be proved by (a comparison with) their own handwritings "

In regard to a Royal Deed says Kālyāyana "What is (known as) *Pachikāra*<sup>3</sup> order, one should deliberate it with effort, if it is based on good probative reasoning, it would then be a valid document, otherwise it should be cast aside, and one should decide it again. If what is untrue has been established as true through ignorance, that should be set aside, even though it was declared as valid by the king with effort". *Pachikāra-nibandhanam* : *e* entered as a document of success (*Jayakāra*) known as *Pachikāra*. When a document bears the (royal) seal, even if all

1 Ch I 145

2 Ch VII 13

3 पञ्चिका see above p 101 where this kind of document has been fully described.

those who were entered in the document be dead, that document is regarded as reliable evidence" 'Reliable evidence' : *i. e.* by reason of the seal etc

Hence also *Prajāpati* says by taking *Sāsana* as an example "In regard to a Royal *Sāsana*, the decision should be made after great effort in exhorting on it the King's own handwriting his signature, and the handwriting of the scribe" *Kātyāyana* also "A *Sāsana* obtains validity when it is carefully completed without any flaw in regard to the royal seal, in regard to its execution, in the matter of possession, when it contains the marks, and is endorsed in the king's own hand". 'Completed in execution necessary without any flaw', *i. e.* devoid of any degraded, or disconnected words, or the like

A peoples' document also sometimes acquires validity by possession, so says the Same Author. "In the presence of one who has reached competence, if possession of property is enjoyed under a document for as long a period as of twenty (years), that document becomes free of defects". In another *Smṛti* also has it been stated "Now, if a pledge with possession has been firmly well established for twenty years under a document, such a document is (regarded as) free from defects. When a boundary dispute has been decided, a boundary deed has been ordained, its faults should be declared within twenty years."

A document of pledge entered in a debt bond attested by witnesses who are dead is regarded as of good evidence even with possession for a small period. A transaction of pledge is 'a pledge', 'dead witnesses', *i. e.* the witnesses on which are dead. So also *Nārada* <sup>1</sup> "Where the witnesses, the creditor, the debtor, and the writer are dead, that document also becomes valueless unless it contained a pledge of permanent duration" 'Duration', *i. e.* possession. Or, it may be validated by proving the document to the debtor by the receipt of some amount paid upon the strength of the document, so says the Same Author. "If anything has been received, or knowledge had been brought, the document will certainly be good evidence, even if the witnesses be dead" The Same Author <sup>2</sup> further expounds 'knowledge' "When a document is produced every time, has been urged, and proclaimed, it remains valid for ever, even if the witnesses are dead"

*Prajāpati* also states that a (document may obtain) validity by possession. "Where a document was executed under a different motive, and where the person entered in it denies it, the person in whose possession the document stands, for such a one the possession may be directed"

1 c as by way of a decision The use of the word 'possession,' is only indicative Hence also *Nārada* <sup>1</sup> "If a document is signed by a stranger and meant for a different purpose, it has to be examined in case its genuineness is suspected by inquiring into the connection, and with the titles and by resorting to reasonable motive" 'Made

PAGE 65\* for a different purpose' 1 c for deceiving the co-bears etc *Vipratyaya*, 'difference,' 1 c suspicious, connection,

in the past, such as payment and repayment of money, 'title' e g whether it is possible for him to have such money or not, of this sort, 'motive' 1 c inference

In this manner, a document marked with the name of the creditor, should also be examined whether it was executed from motives of deception or the like To that effect also *Bṛhaspati* <sup>2</sup> "Their own kindred relations deceive women minors and persons under distress, who are ignorant of letters by making a document marked with their own name, therefore it should (correctly) be examined by regard to circumstances and inferential reasoning and then executed Forgerers who are adepts in (their knowledge of) the country and transactions, utter forged documents, therefore one should examine it with effort" 'Ignorant of letters' 1 c one who does not know the letters *Katyayana* also As a reflection in a mirror (although) not real, looks as (if it were) real, in the same manner, artful people prepare reflections of documents' *Vyāsa* also "Some artful men write documents as if (they are) real documents, therefore no proof is regarded as conclusive on the sole strength of documents Therefore the import is that it should be carefully scrutinized Hence also *Nārada* <sup>3</sup> 'There are some men who depose falsely in regard to a cause through covetousness, there are other wicked souled men who utter false documents, both should be scrutinised with meticulous care by the king, (viz) documents, according to the rules regarding documents, (an) witnesses, according to the law of witnesses' 'According to the rules regarding documents' 1 c by all the means existing before which would establish the genuineness

That document, however the genuineness of which cannot be established by all these means, such a one certainly is not good evidence Then, in that case, casting it aside, one should make a decision by (means of) an ordeal 'when there are no documents or no witnesses, one should resort to the ordeal in a lawsuit vide this text of *Katyayana* Similarly



also has been stated by Hārta even with this same view " (Where a party says) this document was not executed by me, it was caused to be falsely made by another,' such a document should be laid aside, the decision in the cause should be by an ordeal " The purport is that, where a document is not entirely free from a suspicion of its being false, there the decision on the point at issue shall be by an ordeal, since a document which has been written in his own hand, and has been produced as an instance, cannot be disrespected, therefore even where there is not one's own hand, *gotra*, and mark etc but on account of a strong protest by the defendant where the suspicion of its being false cannot be removed, there also, by an ordeal shall be the decision To that effect is *Prajapati* 'Where a document exists which is equal to it in appearance in regard to the name and *gotra*, but where the money is (alleged to have been) not received, there, the decision should be made by (recourse to) an ordeal " 'Equal to it in appearance,' i.e. equal in appearance to the other document which is not disputed, 'money is not received' i.e. where the defendant is strong (in his protest)

As to what has been stated by Nārada "When a document is (alleged to be) false, and the debtor has not declared open the flaw, then after a lapse of twenty years the document acquires stability', the meaning of that is this a document which is attacked as bad, but (along with it) possession has been for a long time, it has to have its evidentiary value established by an ordeal, as (possession) for a long time merely cannot establish (its) permanence One however, who does not (take steps to) remove the flaws in a document, for such a one Kātyayana states a penalty "When 'the statements of witnesses, as also the writing in a document are alleged to be false, one who does establish the validity of the (alleged) invalidity, shall be made to pay the penalty for the highest amercement'. The meaning is that when the statements of witnesses, and also the document (written) by a scribe, have been attacked as false the plaintiff who does not establish the validity of what has been attacked as false, such a one should be punished with the highest amercement

In the case of immovables and the like, however, the Same Author states another penalty "He who makes a false document about the sale or mortgage of immoveable property, and when he has been duly proved (to have done so), such a one should be deprived of his tongue, hands and toes . Therefore the source of this document should be brought out by

(means of) the holder of another document, so says  
PAGE 66\* Vyāsa "When a document executed by another man  
is seen in the hand of another, by such a one must  
necessarily be explained the document and the reason (of his possession)  
of the document from him". 'From him', i.e. from the owner.

Likewise, when documents mutually conflict, the Same Author states the  
rules as to which will supersede which ✓ "As against a document in one's  
own hand the peoples' document, over that, however, is royal *Sāsana*  
regarded as superior evidence, when produced for a decision at law" By the  
10 use of the expression 'peoples' (document) here, is indicated any document  
other than the one made in one's own hand under the maxim of 'the Cow and  
the Bull' Also by the words 'Kings', (is indicated) King's orders other than  
the *Sāsana* And therefore (a document) executed by another has greater  
force than that made in one's own hand (superior) to that also is the royal  
15 (order), and (superior) to that even is the *Sāsana*, this is the meaning

The greater strength of the one following, over the one preceding, is to  
be understood from a relative improbability of fraud Hence it should be  
understood also, that an unattested document executed in one's own hand is  
superior to an admission (*Upajata*), and of greater strength than this is that  
20 which is made in one's own hand and bearing (attestations of) witnesses

Hence also documents as a class are superior to witnesses; so says  
Samvarā "Against a document evidence which consists of witnesses,  
that is declared as false, for it is a door for illegality, and hence the king  
should discard it' The meaning is that witness evidence which is opposed  
25 to documents is powerless Brhaspati also "Where the force of letters  
is utterly destroyed by oral evidence, there would be an entire annihilation  
of transactions, and disorderly confusion is produced". 'Transactions',  
i.e. documentary evidence Katyāyana also "Not by ordeals, nor by  
witnesses, is a document defeated anywhere, the legal force of a document  
30 is always superior, and hence is never subordinated by any other". But by  
a document it is defeated, so says the Same Author 'Either by a counter  
deed regarding the same matter, or by a document made particularly  
for that matter, may documentary evidence always be refuted; it  
can never be refuted by any other' 'By any other', i.e. such as by  
35 witness evidence etc Hence also Brhaspati "A document is never defeated

1 मन्त्रवैयस्य, Cp अन्वयविवेक-व्यास The two are contrasted thus Where a  
particularly mentioned object is intended to be prominently stated, there the अन्व-  
यविवेक-व्यास is applied; but where the separate mention of the two is in regard to their  
greater or less notoriety there the मन्त्रवैयस्य is used. 2 Ch. VIII. 31

by witnesses or by an ordeal by non production or by non-declaration it gets a defeat by negligence, i.e. running over a long period" To that effect also Vyasa "An unseen or undeclared document, of which the creditor and the debtor are dead and also one which has neither a security or surety, is not held valid after a long interval" 'Neither security or surety', i.e. without either a pledge or a personal surety The import is that 'after a long interval i.e. if of a long date, is not held valid, by itself Kâlyâyana also "A document over which thirty years have passed, and which had never been produced or declared, such a one is not held valid even if witnesses exist In regard to 'non production', the Same Author states a special rule "When money lent has ceased to carry interest, one who does not produce a document, nor does he make a demand from the debtor, such a document assumes a suspicious aspect' 'Debtor i.e. who is nearby, and wealthy is implied So also Brhaspati "When a debt has not been demanded from one who is wealthy and also is at hand, by one who is competent it loses its validity on account of suspicion, in such a case a document is reduced to powerlessness' 5

In this manner where a document is reduced to invalidity generally on account of non-production &c the Same Author<sup>2</sup> states an exception "In the case of the insane, the idiot the minors those afraid of the king, or those on a journey, those who have not reached maturity of 20

PAGE 67\* intellect or those oppressed with fear, a document is not invalidated' Samvarta, however, regards documents of a long date to be deserving of consideration, although they look like semblance of documents 'That which has been made under compulsion or subvention, as also that made by an interested person or a lunatic, these and many others like these, if of a long standing may become the subject of a dispute' Therefore, the import is that in regard to these and others the aforesaid procedure regarding (the testing of) the validity should be followed by the deciding authorities Hence also Kalyayana 'When after taking money, a writing is duly passed to another, or when it is concealed by another when it is in his hands, or when it is confined in another's house, or wherever money has been advanced or returned preceded by a document this same rule of procedure should be understood (to be applicable) for the determination of validity of documents' 25

Thus in the Smṛticandrikâ the Examination of Documents. 30

Now the Discussion about Possession—*Bhaktinirūpanam*

There Nārada <sup>1</sup> “Having heard the reply (of the defendant), (in the part) for the consideration of proof, one should point out documents as the means, or possession for a long time with the <sup>2</sup> characteristics determined by the neighbours” By the use of the word ‘means here are expressed witnesses under the maxim of the ‘Cow and <sup>3</sup> the Bull’ Therefore the meaning is thus One may exhibit a document or witnesses in disputes relating to houses, lands or the like, or one may declare (his) possession Hence also, by this Same Author has been detailed a special rule “In disputes regarding a house, or land or the like, the decision is to be from the (evidence of) the neighbours, men belonging to the town or village corporations, and also men who are the most senior, what these men may say when duly appointed, that should be accepted as the decision of the cause The substance is thus in a dispute regarding land or other (kinds of) immovable properties, one may direct either of the kinds of human evidence, but never an ordeal There even, documents and possession these two, are the best, so says Kātyāyana “Documents, witnesses, and possession are regarded as the three means of proof, in these means of proof for men, possession has been regarded as on a footing of equality with valid documents’ The order of words is ‘in the means of proof for men’ : e the meaning is, among human evidence ‘Valid documents’ : e unimpeachable documents

At some places, the Same Author mentions the superiority of possession alone over the other two, / “When there is a doubt in regard to a passage of way in a street, a watercourse or the like, possession alone has preponderance among the means of proof, this is certain Even in regard to matters other than a street etc, without the help of possession, the other two have no importance, so says Nārada “Even when a document exists, and even when witnesses are living especially in regard to the immovables, that which has not been in possession, cannot have stability (of title)’ Yājñavalkya <sup>4</sup> also ‘Even in a title, there would be no force if there is no possession even for a short time”

1 Not found in the published editions

2 साधनगुणोपेक्ष—See Yājñavalkya II 151 and the *Mitaksharā* Text p 104 lines 13-14 and English Translation page 1150 II 23-26 with quotations from Kātyāyana

3 See above p 120

4 Book II 27

'In a title,' e g in a purchase which can be established by documents witnesses and the like. Thus it comes to be stated as of course that in the cases where there are documents without (evidence of) title, even a little possession is merely useful by reason of its removing a doubt, but it is not (by itself) a means of proof. It has also been stated by Kalyāṇa "When in the presence of one who has capacity, possession is enjoyed under a document, and ten<sup>1</sup> years have passed over, there, the document is (regarded as) unimpeachable." By Brhaspati<sup>2</sup> also 'Of one in regard to whom are written down in one Śāsana the village, land and gardens also, even by the possession of one only, all (others) of these are regarded as being possessed by him' 5 10

PAGE 68\* Where, however, the owner has not prevented an adverse alienation, a document of such an owner is fruitless for him. So says the Same Author<sup>3</sup> "One who, while looking on, does not make any move while another is alienating the land such a one, although an owner, will not get it back even if a document exists." 'Exists' : e is a good one, the word 'land' also is indicative of the subject matter of the alienation. As says the Same Author<sup>4</sup> "One whose property is being alienated in his presence by his coparceners, or by strangers and another is in possession that one will not afterwards be entitled to recover it" 15 20 The meaning is that the document of title of the owner is destroyed of its force as supporting his title of ownership by his non intervention at an alienation in his presence, which becomes indicative of the owner's consent. By this it comes to be stated as a matter of course that the owner who desires to establish his ownership by a document must prohibit with effort 25 an alienation in his presence.

The same (rule) should be observed in (the case of) unobstructed possession in one's presence. To that effect also Vyasa "One whose land has been occupied by others for twenty years (even) when a powerful king be there, such a one will not succeed in his case : e even when there is a document—this is implied. Hence also Samvarta. While one is in occupation of a house, or a field one whose possession occurs when the king exists there a document is of no use, : e it will be of one occupying who is in possession since, in such a case for one who is neglectful, a document of title is of no use, : e cannot be a means of proof since by a neglect of possession which is indicative of an obstruction to ownership the capacity of a document as a means of proof is destroyed this is the meaning 30 35

1 Some quotations read twenty years See Coll p 724 1 6

2 Ch VIII 18

3 Ch VIII 19

4 Ch VIII 8

- This, however, has been stated with the object of indicating the futility of a document, and not, moreover, for demonstrating the ownership of the person in occupation, since his (title of) ownership cannot be established by (the fact of) mere occupation. Hence also *Katyañjana* "One who has forcibly taken away beasts, women, or men should not lay stress on possession nor his son also, this rule has thus been established." Hence also the illustration of a cow has been given by *Vyāsa* "As a cow perishes when neglected by the cowherd, so also land occupied by others in one's presence is taken away by possession." By *Yājñavalkya*<sup>1</sup> also in this manner has been stated only the loss of one who neglects, but not the acquisition of title by the occupier. "Of him who, while he sees his land being enjoyed by another looks on, and does not object, the loss of (the right to) the land occurs after twenty years, of money (the loss takes place) after ten years (under similar circumstances)."
- The loss here contemplated is only of the means of establishing one's title of ownership upon the strength of a document, and not in regard to the ownership over the land or its fruit, as it has been said that by mere neglect, the right of ownership is not lost. Therefore in such a case, the right of the neglector is not lost, if the decision be (taken) by (resort to) an ordeal, as the right of ownership may possibly be established by a resort to it. Not so certainly by a resort to what is known as a judicial investigation, as the weakness of the document has been stated, but by a resort to the second kind of judicial proceeding, as the unimpeachability of the person in occupation because of the owner having no answer, a non owner would win. So says *Manu*<sup>2</sup> "If (the owner) is neither an idiot nor a minor, and if his chattel is enjoyed (by another) before his eyes it is lost to him by law, the adverse possessor shall retain that property." *Bṛhaspati* states the meaning of the word *Vyatāhāra* "That which has been determined by means of proof is called *Vyatāhāra*, being rendered unanswerable on account of verbal trickery is declared to be the second." "Determined by means of proof" i.e. determined by means of human proof. Of one also who has been defeated by reason of his indulging in verbal trickery, or who has been rendered answerless, a judicial decision is certainly reached, because the success of one in possession is rendered easy on account of an absence of the means of proof, as *Yājñavalkya*<sup>3</sup> has stated "After discarding all circumvention the king should decide disputes according to facts."

In this way, on account of a non protest against an adverse alienation or possession, the uselessness of the witnesses also, should be understood to follow after the rule<sup>1</sup> of 'the Stick and the cakes' Hence also Nārada<sup>2</sup> "Of him who neglects and stands by, if a period as aforesaid is passed, the suit does not succeed" The meaning is that the point which he has in view cannot be established by human evidence The Saṅgrahakāra also "Without possession, (mere) title is useless when it (i.e. the land) is being enjoyed by others also' By the word 'title', here are expressed the means for its proof, such as documents and witnesses Hence also Marichi states a loss generally even of those cases which could be established by witnesses "A cow, a conveyance, an ornament, a friendly loan, must be returned within four or five years, otherwise it may be lost"

Here Manu<sup>3</sup> states an exception 'Things used with friendly assent, a cow, a camel, a riding horse, and (a beast) made over for breaking in, are never lost (to the owner)' 'Made over for breaking' e.g. a young calf In the case of a friendly loan (*Yūhitaka*) Vyāsa states an exception: 'What is enjoyed as a friendly loan by the vedic scholars, or the king's officers, or by friends or by the kindred also, never is it lost by possession (with the bailee)' What i.e. such as ornaments etc. the Same Author states the reason why there is no loss 'Extinction of religious merit (*Dharma*) shall occur in the case of a vedic scholar, there will be danger in the case of the king's officer, friendly feeling in the case of friends or kindred, (therefore) what is enjoyed by these is not lost (to the owner)' 'Enjoyed i.e. even for more than five years, is the implication By this, it comes to be stated that in the case of forbearance for a good cause there would be no loss at any time, therefore, even in cases of (the rule as to) the loss by a possession for ten years or for twenty years also, an exception should be observed when there is forbearance for a good cause Hence also Manu<sup>4</sup> "A pledge, a boundary the minors property, an open deposit (*Nikṣepa*) a sealed deposit (*Uṣṇiḥ*) women the property of the king and the wealth of a vedic scholar (*Śrātrīya*) are not lost on account of (possession) enjoyment.' In the case of boundary, the reason for forbearance is the marks at that spot being good means of proof. in the case of women

1 *इष्टावृत्तिः*—The maxim of the staff and the cakes *अथवा इष्टा वृत्तिः अथ अष्टावृत्तिः*

2 Not found in the printed edition

3 Ch. VIII. 166

4 Ch. VIII. 169

king and of a Srotriya, as also as regards the  
 PAGE 70\* idiots and minors' wealth' 'Of women i e in  
 regard to (their) property, 'without a document i e  
 without evidence of title, Narada<sup>1</sup> also 'The property of a woman as  
 also of kings can never be lost (to the owner) should it even have 5  
 been enjoyed for hundreds of years without a (proper) title The  
 meaning is, of the kings also, the property For, says the Same  
 Author<sup>2</sup> also "By enjoyment before his eyes for twice ten years, even  
 pledges and the like also are lost to the owner, excepting the property of  
 the king 'Of pledges and the like also, this is an over statement Even in 10  
 regard to these there being the possibility of the existence of a reason for  
 forbearance against possession by stating 'Without title On a parity of  
 reasoning with women's property, or King's property, the Author points out  
 that if there is a (good) title, it is lost It also has been pointed out by  
 Harita 'What was enjoyed by a soldier, or a swindler<sup>3</sup> or by force, 15  
 what was robbed, or was kept secretly concealed, as also what was given  
 out of friendship or love, or which was given out on hire, likewise for  
 the protection of a dwelling, or what was obtained upon a request out of  
 love - in all these several kinds of possessions title has been declared in  
 the Smritis to be the determinant For the protection of a dwelling i e 20  
 for the protection of a dwelling house Thus it should be construed that  
 possession which was adverse and was without a reason for forbearance  
 if it was for the stated period, in the absence of a (good) title makes (the  
 evidence of) documents and witnesses useless Therefore, in cases  
 regarding a house or a field or the like, such documents or witnesses 25  
 should be declared as evidence, as are favourable for the fact of possession,  
 and are unfavourable by reason of an absence of (evidence as to) personal  
 knowledge or donation

Again, what kind of possession should be declared ? Anticipating  
 this question, it has been said 'With the characteristics 'determined by 30  
 the neighbours, possession (continued) for a long time' Lana etc which  
 is in the vicinity of the field i e which is the subject matter to be  
 determined' upon—the owners of that are the Sāmantas—neighbouring  
 proprietors, known by these is the one determined by the neighbours  
 What is the meaning 'Possessing the characteristics has been pointed out 35

1 Ch I 83

2 Ch I 82

3 मट-चाट-मट—a soldier a mercenary or a hireling चाट—a rogue a swindler  
 —मटारक-विधारय य परधनमहरति—see Yajñ I 336 Coll p 678

3 भाटक—wages hire rent

4 सामन्तसन्नेषिनी—See note above p 122



by Pitāmaha "Accompanied with (a good) title continued for a long time, uninterrupted, without protest (from the opponent) and with notice to the opponent, thus possession has been stated to be of five varieties in the smṛtis' Accompanied with (a good) title, i.e. having a good title for its foundation So also Harita 'Never without a root does a branch grow up in the firmament, therefore a good title is the root, and possession has been declared to be the branch'

What again is (good) title? Anticipating this says Nārada "What was acquired or obtained by gift or by purchase, as a result of bravery, is also at a nuptial what devolved from an issueless kindred, thus of six varieties is the source of (a title to) wealth" 'Acquired' i.e. obtained by birth (right) such as the paternal estate or the like etc., or acquired by finding<sup>1</sup>, such as a treasure-trove etc. Brhaspati<sup>2</sup> also 'By learning purchase charge bravery, or in connection with a wife or issue, and the share of an issueless sapinda (thus) an immovable is acquired in seven different ways Charge i.e. a pledge (or mortgage), that too sometimes becomes a cause of ownership as we will say (hereafter), '(continued)' for a long<sup>3</sup> time i.e. for not less than thirty years To that effect, says the Same Author<sup>4</sup> "Commencing (from the time of) occupation, one whose possession has been continuous for (a period of) thirty years without a break, that possession of such a one should not be disturbed" 'Occupation', i.e. seizure

Thus, moreover long continued possession supported by (a good) title is (good evidence), and if it be not for a long time, it should be supported by title, thus should (it) be construed Hence also Pitāmaha. 'Not without title is possession (of any use) nor the title (if) devoid of possession, by the mutual interconnection of these two, evidence is well placed i.e. (as pointed out) in the aforesaid adjustment With this import Brhaspati also says 'By possession merely never can land be securely obtained nor even by a good title (only), it is securely established by the law, and not otherwise' 'Merely i.e. without a proper title In this manner if it is without the other qualification, even then (also) it is not securely accomplished Hence also Vyâsa

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"Accompanied with a (good) title, long continued, uninterrupted and in the presence of the opponent,

(thus) possession is expected to have five components"

1 वरान—Acquisition Cp apprehensio or occupatio of the Roman Law Same as अधिगम In Gautama Ch X 39-42 2 Ch. IX 2  
3 ईर्ष्याया—See the text of Pitāmaha above. 4 Ch. IX 7

By saying 'having five components', the author points out the insufficiency of possession as evidence of (ownership) the same if it be wanting in one component even. And (so) it has been pointed out by Nārada<sup>1</sup> "He however, who pleads possession only, and no title of any sort, such a one should be considered as a thief, in consequence of his pleading such illegitimate possession" Therefore, the import is, that the title and the like components also must be declared in the presence of the members of the Court. Hence also Kātyāyana "By a disputant who has taken his stand on possession, but whose document of title has been lost, should be declared in the assembly, the period (of his occupation), evidence, and donation also". The use of the word 'donation' is indicative, by implication, of a title, the word, 'and', *cha* is intended to include continuity and like other particulars. Thus this is the substance. By a disputant who relies upon possession as evidence, the evidence consisting of and known as possession, and its particular compliments such as title, long time, and like others, should be declared. If, however, after these are declared there is incongruity these should be established (by evidence) as there cannot be a certainty by a mere declaration.

In such a case the determination of a long continued and the like special kind of possession is dependent upon witnesses, so says the Sangrahakāra "In regard to the establishment of (the fact of) possession, the chief witnesses are first, its cultivators, inhabitants of the village, field neighbours (these are) in the order for establishing it". For establishing it: *i.e.* the meaning is, bringing out the particular fact of a long time and the like and possession also.

For bringing out the title however, the three, such as documents and the rest, are evidence, as says the Same Author "Documents, witnesses and possession are the (means of) proof in regard to (a dispute about) a field a house, and the like when long continued title, purchase and gift are disputed. The meaning is that when the plea of possession is destroyed and the basis of title such as purchase etc are disputed, and refuted by the defendant, for one who has to make out a title in regard to land etc evidence consisting of witnesses and possession is proof.

Indeed, how can possession be evidence of title, for even possession without title is witnessed in cases of forcible deprivation and the like, (the answer is) no, not so. For in the case of possession which is characterised by

AN OBJECTION

<sup>1</sup> Ch. I. 86

(continuance for) a long period, when any other origin is not forthcoming, its origin in a good title itself is what remains like the Vaidic origin of the Smritis of Mann and others

Indeed, even then when possession which had commenced at a time within memory has been taken away, and there is non-perception, although proper means exist (for it) and thus the absence of the original foundation of title is determined, in such a case how can title be established on the strength of possession merely? (The answer is) true, and (therefore) it is for this very reason that title is attempted to be determined by means of documents and witnesses. If, however, it has commenced at a time within memory, on its own strength even, and so it may be proper to mention the three kinds of evidence. This very thing has been stated also by Kātyāyana. "In cases (falling) within the memory of man, possession in the case of land is regarded as evidence of ownership when it is with title, but in cases (extending) beyond human memory, enjoyment for three generations suffices by reason of the absence of knowledge of (the proof of) title." 'In the absence of title', i.e. the meaning is knowledge of (the proof of) title. In the absence of title, i.e. the meaning is that in the absence of any contradicting evidence in the form of an absence of circumstances which may account for the non-knowledge.

This is (in short) what is (intended to be) stated. Possession continued within a period which is likely to be within memory : i.e. within a period of one hundred and five years is regarded as evidence of ownership only by the evidence of title other than of oneself, as the knowledge of one's origin by oneself is vitiated by the absence<sup>1</sup> of

1. वाक्यानुपलब्ध्या—इत्या + अनुपलब्धि—mark the term अनुपलब्धि उपलब्धि means ज्ञान or knowledge and अनुपलब्धि is its absence, absence of knowledge. An अनुपलब्धि may occur in two cases viz. (1) where there is a capacity for the perception but still there is want of perception (as a fact), and in that case the अनुपलब्धि is योग्या, and secondly (2) where there is an absolute absence of capacity for perception and therefore there is want of perception in which case it is वाक्यानुपलब्धिभाव. Thus वदन् वदाम् may be possible in two cases (1) where the absence of knowledge or perception is not due to an absolute absence of the means of perception such as the eyes &c. but still there is ज्ञानभाव. Here there is अनुपलब्धि in spite of the means for the उपलब्धि and so the अनुपलब्धि is योग्या.

In the present context where the possession is recent it is possible to ascertain the origin but there may exist circumstances which may account for the non-knowledge (अनुपलब्धि) of the origin, in such a case it is वाक्यानुपलब्धि (see for a further exposition Coll. Vol II Mutak. p. 735 (note)).

circumstances which may account for the knowledge. In regard, moreover, to a possession commenced within a period likely to be within memory, i.e. within a period anterior to an interval of a hundred and five years, even without (the evidence) confirmatory of one's origin, can be (regular as) evidence of ownership based on other means of proof. The exposition of the expression 'handed down for three generations in succession' has been made by the *Sangraha-kāra* "That which was enjoyed by three generations of deceased ancestors independently, such possession should be known to be (descended) from three generations, enjoyed during their lifetime" Thus, moreover, is generally stated by way of an example of possession commenced beyond the period of (human) memory, thereby when possession has

PAGE 72\* been used as evidence of title, its descent from a successive line of three generations is of no use its commencement beyond the period of (human) memory alone is useful

Hence also even in the absence of a period exceeding three generations possession has been stated by *Brhaspati*<sup>1</sup> to have the characteristics of a descent for three generations as regards time only "Should even the father, the grandfather and the great grandfather of a man be alive, land having been possessed by him for thirty years, without the intervention of strangers it should be considered as possession extending over one generation, possession continued for twice that period (is called possession) extending over two generations, possession continued for three times that period (is called possession) extending over three generations, possession (continued) longer than that even, is (called) possession of a long standing 'Thirty years' i.e. plus five is (to be) the supplement, as it has been stated in another *Smṛiti* that 'when for thirty-five years, it is called possession for a generation

Thus moreover one who sets up a title must establish the title by means of documents and witnesses only, as evidence of possession which was commenced at a period beyond human memory would be impossible. Hence also *Brhaspati*<sup>2</sup> "When the person who took possession is complained against, a document or witness is (considered) decisive, when he is no longer in existence possession by itself is decisive for his sons. When he is not in existence i.e. the person who took possession is not in existence. With this very import *Kātyāyana* also 'The

1 Ch IX 23-24

2 Ch IX 25

person who took possession, although in occupation, must clear up defects in the document; his sons, however, the defects in the possession; but he is not saddled with defects in the documents". The use of the word son, is indicative by implication of the son's son also. Hence also Yājñavalkya<sup>1</sup>:  
 5 "He, who made the acquisition of title, if sued, should prove it; (not) not his son, nor his (i. e. the son's) son; for in their case, possession itself has greater force." One who has acquired a title, must substantiate the title by means of documents and witnesses only, as possession is not powerful, by reason of its having commenced at a period within human  
 10 memory. Therefore, one who has acquired it, must prove the title independently of possession. And of the son and the son's son, moreover, when they are in continuous possession for a long time, by including possession also as means of proof.

Therefore in the case of continuous possession for a long time, the  
 15 proof of that even is sufficient; so says Bṛhaspati<sup>2</sup>: "The person taking over should establish his possession and title also in court; his son (may prove) possession alone; while the son's son and the rest, nothing at all". The meaning is that his son should prove possession alone, continued for a long time from the time of the commencement of possession by the first man  
 20 until a very long time before the (commencement of the) dispute without protest and continuing in the presence of men who had a right to oppose. The use of the word 'son' is intended to indicate the son's son also. Hence also another Smṛti: "One, however, by whom possession has been taken, shall be punished if he did not establish (his) title; not his son, nor  
 25 his son also; nor also is their possession lost"; i. e. the implication is, that when the possessor has been continuing for a long time. By this it necessarily comes to be stated that in the case of a long continued possession on the part of the son's son and the rest, even if title is not established, possession is not lost.

It has also been stated by Viṣṇu<sup>3</sup>: "Land the possession of which has been enjoyed for three (generations) according to law, even in the absence of a document, the fourth man in such a case shall duly retain it". 'In the absence of a document' i. e. the meaning is that even in the absence of evidence throwing light on the title such as purchase or the like others.  
 30 Hence also Bṛhaspati<sup>3</sup> even: "What has been held in possession by three generations under different kings, even without evidence, such possession is equal to the gift of the Veda, and should never be taken away by the king  
 35

on any account". 'With evidence' i.e. evidence throwing light on title Nārada<sup>1</sup> also "That which (being) absolutely without a title, has been continuously held in possession by three generations in the past, never such (possession) is possible to be taken away which has come down in a succession of three generations" 'Absolutely without a title' i.e. the meaning is that even without a title, even such as may he obtained by possession even Śankha also "Ancestral property, even without (evidence) of title, (hut) which has been held in possession by the past generations, one may secure". This is of the same import as the last 'May secure' i.e. the fourth (generation), and the following So also Brhaspati<sup>2</sup> ✓ "Where possession extending over three generations has descended to the fourth generation, it becomes legitimate possession, and title must never be inquired into". The meaning is that in the case of possession of this character, one should not enquire about any evidence as to the origin of title on any account

In the case of a possession characterised by continuity or the like, one should certainly ask for evidence To that effect Nārada<sup>3</sup> "Where the (first) occupier of property himself has been complained against, he must bring out its basis, possession by itself is sufficient in the case of those who have obtained in successive heritages" 'The basis' i.e. the foundation, in short, the title. 'Sufficient' i.e. by reason of the existence of continuity and the like established on evidence 'In the case of those who have obtained', i.e. in the case of the fourth and the following Brhaspati<sup>4</sup> also "What has been held in possession without interruption by three generations (in succession), in such a case it is not necessary to prove title, possession is decisive in such a case' In such a case the determination of title for the fourth and the others need not necessarily be made, since in that case, possession descended from three generations and by reason of its possessing the characteristics of continuity etc when so established, is decisive The meaning is that even without the determination of title, it is proof by itself independently For, the Same Author<sup>5</sup> says

1 This text in exactly this form has been assigned to Harita in the *Mitākshara* (see text p 22 ll 23-25) A text of Nārada, however is found in his *Smṛiti* with a slight variation viz instead of यद्विनामपश्यन् the text there reads यद्वत् यदेतानि यद्वत् (see Ch. I 91)

2 Ch. IX 26

3 See Ch. I 90

4 Ch. IX 27

5 Ch. IX 28

"In suits regarding immovable property, (possession) held by three generations in succession, should be considered as valid, independently by itself, and makes (valid) evidence in the decision of the cause ' 'Independently by itself, i.e. not dependent upon the (evidence) which was the basis of his title Kātyāyana also "Possession has been declared to be of two varieties, with title, and without title, that which has continued for three generations is independent by itself (even) without a title, while the other is with title " "With title " i.e. whose title has been firmly established

10 Indeed, though independent by itself, it is certainly with a fixed title, as the title is determined by its own solidity

AN OBJECTION No, not so, for in the case of long continued possession for a period beyond memory, by reason of its having the special characteristics of continuity etc, there is an absence of firmness as to the whole Nor also should it be said

15 THE ANSWER that in the case of the fourth and the rest following, proof of its possession should also be exhibited Since the necessity of the establishment of possession beyond (human) memory has been negatived in the text 'The Son's son and the rest, however on no account' And also in the text<sup>1</sup> "Possession by itself is sufficient (proof) in the case of those who have obtained it in (hereditary) succession from (his) ancestors, the rule as to the establishment (of title) being laid only in regard to possession within this period of (human) memory Therefore possession independently by itself has an undetermined title How then can it be

20 (taken as) evidence of ownership? The answer is even in the absence of a title the evidentiary value of such kind (of possession) has been admitted by reason of the extreme impossibility of the alternative (as to the necessity) of a title as also by reason of the absence of an invalidating circumstance viz the certainty of an absence of title As in the case of a heinous offence or the like, on account of an absence of certainty merely about a false aversion, the evidence of witnesses is desired as in the text

30 All are (admissible as) witnesses in cases of adultery robbery abuse, and violence, so here also Thus everything is alright

35 Hence also Kātyāyana Long continued possession (though) not well known one should not disturb out of covetousness 'Not well known as regards its origin or title

It comes to be stated this as even where a decision was reached (hut) which was obtained by deceit, the disturbance of possession is desirable in conformity to the new decision, and not so of a long-continued (possession) *Hārta* also "Even without a justification what was held in possession by the father, or also by the brother even that cannot be taken away when it has devolved upon the third" The meaning is that when it has devolved 'beyond the third' Hence also *Nārada* <sup>1</sup> "Without a justification even what has been held in possession by the father and his three predecessors, never can that be taken away which has descended in succession for three generations' The meaning is that what was enjoyed in possession for three generations prior to and along with the father, it is impossible to say that it was without justification, what more about being taken away?

As for what has been stated by the Same Author <sup>2</sup>

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'With a clear title, possession obtains an evidentiary value, possession with a title which is not clear, never makes (any) evidence (of ownership),' that has a reference to possession which has not descended for three generations, for if it were to be held to apply to possession merely, it would be in contradiction with the several texts aforesaid, and in contradiction to the text of *Yājñavalkya* <sup>3</sup> also viz "Title is superior to possession, excepting where it (i.e. possession) has descended from a line of ancestors'

As to what has been stated by *Brhaspati* <sup>4</sup> "One whose possession has passed through three lines, and is duly substantiated by documents, possession of this character is equal to the gift of the Brabma, never can that be taken away", that has a reference to possession for three generations which has not extended beyond the period of memory As to what, moreover, has been stated by *Nārada* <sup>5</sup> "He, however who holds possession without title, even if it be for many hundred years the ruler of the land shall inflict upon that sinful man the punishment ordained for a thief," that has a reference to possession by any means whatever in regard to matters which have been definitely declared to be not the basis of a title, as the expression 'without title' has been taken as for granted

Possessions which have been definitely declared to be incapable of substantiating a title have been pointed out by the same <sup>7</sup> Author 'What has been deposited with a third person to be delivered ultimately to the owner (*Andhuta*), stolen property, what has been (held as) a deposit, what

1 Ch. I 91

2 Ch. I 85

3 Book II 27

4 Ch. IX 29

5 Ch. I 87

6 लिङ्ग—taken as established

7 Ch. I 92



is held by force, loans for use, and what is held in possession during the absence of the owner, these are the six (ways) in which possession is without a title". *Anvhitam* i. e. what was made over for giving to another; 'loan for use' i. e. ornaments &c. of another brought for use; 'held by force', i. e. held in possession under the strength of the King's favour or the like. Possession of this character, although continued for a long time, has no evidentiary value. So also the same Author: "Where a village, land, or a house also has been in the possession of (any) one as descended in hereditary succession, otherwise than under the King's favour, such possession should not<sup>1</sup> be passed to another". 'Under the King's favour' i. e. by an act of injustice, is the implication.

To that effect also *Saṁvāra*: "What was given to another by the king through anger or avarice, or through circumvention, or when pleased, such shall not acquire validity". Where, indeed, land of another has either through anger etc., or out of pleasure, been given by<sup>2</sup> the king to him for enjoyment, that shall not be regarded as valid for the person in possession, even after for a long-continued possession; this is the meaning.

In this manner also, the possession of one in contradiction to the king's edict shall be regarded as invalid. To that effect also *Bṛhaspati*: "He whose possession has passed through three lines, and has been inherited from his ancestors, cannot be deprived of it, unless a previous grant should be in existence".

As to the text of *Pitāmaha*: "(Better) than a document passed in one's own hand, is a peoples' document (*Jānapadam*); but superior to that is the king's edict (*S'āsanam*); higher than that is possession for three generations; (these) are (in order) regarded as proof of title, each of a higher Degree", that has a reference to possession which has devolved in succession under a general repute, and where a well-known (source of) title has not been definitely established; otherwise there would be contradiction with the aforestated texts.

In this manner possession the title to which has been proved by former holders, should be regarded as better evidence. To that effect is *Bṛhaspati*: "That possession is valid in law which is uninterrupted, and of long standing; interrupted possession even is (regarded as valid) if

1 There is a misprint in the text for गृहगतं read 'न गृहगतं'.  
2 i. e. when the same property had been granted to a different person by the King.  
3 Ch. IX. 30.  
4 Ch. IX. 31.

it had been substantiated before" The meaning is, that which has been of a long standing and the title to which had been established by a former holder, such a one, even if interrupted has a valid (legal) force.

Vyâsa also 'Land, the title to which was substantiated by the acquirer when complained against such land when obtained from his son must never be taken away on any account' The order of words is that it should not be taken away from his son. When, however, it was not substantiated by the acquirer when complained against, then title to it should be established by his son who has been in long continued possession just like the acquirer himself. So also Brhaspati<sup>1</sup> "The acquirer should establish title by a document his son however, (by) possession only, if when complained against he dies, his son should duly establish it' The meaning is that by reason of a previous complaint (having been made), possession was

PAGE 75\* (rendered) unsubstantial, and in such a case establishment of that alone would not establish a title and therefore they should establish it The mention of a document is intended as pointing to a witness also, he also has an evidentiary value (in a proceeding) for the establishment of the title of the acquirer.

Nârada<sup>2</sup> also 'Of a litigant who has died when the suit was filed against him, the son should prove the title, (since) the point at issue will not be established by (mere) possession' The meaning is, that just as by the acquirer the title can be established only by means of documents and witnesses in the same manner The mention of the son is intended to indicate one who takes the property Hence also says Yâgyavalkya<sup>3</sup> "If a person happens to die when a suit was filed against him, his (legal) heir should prove it In such a case possession is no evidence (of title) if it is not established by a proper origin' That title, even the fourth man also must establish Since, in such a case possession by itself alone has not been declared as evidence of title

Thus, however, what has been stated by Nârada ' In the beginning (a legal) transfer is a proper (source of) title, in the next stage, however, possession with title and possession which is continuous and has been for a long time is above a (good) title", that should be regarded as having a reference where there has been no decision of an impeachment against the acquirer. The literal meaning however, has been pointed out by the

1 Ch VIII 27

3 Book II 29

2 Ch I 93,

Saṅgrahakāra "Of one who has made the acquisition within the prescribed period, title is the most important, of him also, in the case of the third generation from himself, possession is good where title is clear, and possession which has continued uninterruptedly is good evidence in the case of the fourth, possession, where title has been abandoned has been considered as paramount by itself alone". "Of one who has made the acquisition" i.e. of the acquirer, 'within the prescribed period' i.e. within the period consisting of thirty years, 'most important' i.e. paramount, 'where title is clear, i.e. where title has been tested by proof. That possession which has devolved continuously, and which has been long continued, in the case of the fourth man and the rest, is good evidence, such (possession) where title has been decisively proved 'to have been abandoned is paramount', is quite adequate for the decision of ownership, this is the meaning of the half of the second verse

As to what has been stated by Vyāsa viz. 'Possession which was enjoyed for twenty years by the owner, and was not broken', such (possession) is (called possession) for one generation, when two folded however, it is (called) for two generations, and for three generations when trebled, thereafter, title should not be inquired into", that should be observed in the case of possession by the fourth man or the like for more than sixty years, and in the absence of persons in whose time the beginning was made and when a necessary inference arises for a long-continued possession. Otherwise there would be a contradiction with the Text<sup>2</sup> "In cases (falling) within the memory of man possession in the case of land, is regarded as evidence of ownership when it is with title. Thus, moreover, it is to be borne in mind, that a period of a hundred and five years being stated to be a period within (human) memory, should be regarded as according to the general opinion

Thus in the *Smṛtichandrikā* consideration about possession

Now the Characteristics of Witnesses *Sakṣhalakṣhaṇāni*

There Manu<sup>3</sup> "What kind of persons should be made witnesses in suits by moneyed men, I shall fully describe these, and also in what manner truth should be spoken by them." The meaning is that I shall describe the characteristics of witnesses as well as the rules regarding their examination

1 There is a mistake in the print. Instead of स्वनिता स्वदत्ता read स्वनिताऽप्यदत्ता

2. Cf. *Kaṭyāyana* (See above p. 130 II, 13-14)

3 Ch. VIII 61

There, first the Author<sup>1</sup> points out their characteristics "Householders, persons with male issue, and indigenous inhabitants of the country, be they Kshatriyas, Vaisyas or persons of Sûdra birth, knowing the point, deserve (to give) evidence, and not any persons whatever, except in cases of 'urgency' 'Indigenous' : *i.e.* well established in life, 'knowing the point,' : *i.e.* those to whom the point to be established is personally known, as the Same Author<sup>3</sup> has said 'Evidence in accordance with what has actually been seen or heard is admissible' In the words 'householders etc.' the masculine gender is intended to be expressed, as it is in regard to the point to be dealt with

PAGE 76<sup>2</sup> Hence also Narada<sup>4</sup> "Of respectable families, straightforward, and unexceptionable in their descent, actions and fortunes, the witnesses shall be clean, and unimpeachable men with a pure mind" The meaning is, that men of this type should be witnesses (in events or transactions) regarding debts etc

So also Vyâsa<sup>5</sup> 'Men knowing the law, having male issue, indigenous, of a respectable family truth speaking engaged in the *Srauta* and the *Smriti* performances from whom (feelings of) hatred and jealousy have entirely disappeared who are *Srotriya*s, unharmed who are wise, not given to travelling, youthful, should be made witnesses in regard to debts and the like by a wise man' *Srotriya*s : *i.e.* those who (can) repeat the vedas

Persons of the type as aforesaid never resort to crookedness, so says the Same Author<sup>1</sup> 'Having come to know the transaction, the utterers of false documents who are adepts in (their knowledge of) the country and the times, make a counterfeit document, these, therefore, should never be (made) witnesses' Katyâyana also 'Those whose family and character are well known, who are free from (the feelings of) covetousness or temptation who are truthful, pure and men of high status, the statement of these is without (room for) a doubt.'

The plural number in the expression 'of these' is intended to demonstrate that the statement of a witness or two is not so decisive Hence also Manu<sup>6</sup> "(It) should be substantiated by more than three witnesses

1 Ch VIII 62

2 अन्वष्टि अपर—literally means a misfortune distress In verses 69-70 in the same chapter Manu indicates these cases (see page 145 ll 21 25 further on)

3 Ch VIII 74

4 Ch I 153

5 Ch VIII 60

in the presence of the king and the Brahmanas 'Substantiated' : *i. e.* proved Three, below *i. e.* lower than whom, such are 'more than three' The meaning is that a number less than three is not proper in the case of witnesses.

5 As to what has been stated by Bṛhaspati <sup>1</sup> "Nine, seven, or five should they be, or four, or three only, or two well known *S'rotriya*s, (but) one should never examine one at any time," there, 'two' has a reference to  
 10 subscribing and secret witnesses Since, thereafter says the Same Author <sup>2</sup> 'Of subscribing and secret witnesses there should be two, three, four, or, five of those who have been entered <sup>3</sup> (in the deed), spontaneous, <sup>4</sup> reminded, <sup>5</sup> family <sup>6</sup> witnesses, and indirect <sup>7</sup> witnesses" The distinction  
 1 between a subscribing witness and the others will be stated (hereafter).

As to what has been stated by him "A messenger, a holder of the clock, one who had witnessed the transaction a single one as a witness  
 15 may furnish valid proof, as also a king or the President of the Court' 'Holder of the clock' *i. e.* the accountant, 'president of the Court' *i. e.* the Chief Judge, as also by Vyâsa "One of pure actions, also one knowing (the principles of) law, a witness whose statements have been tested, even one may be good evidence in trials for heinous offences particularly",  
 20 and also by Kâtîyâna "One (however) who was (taken) in (confidence) at (the time of) a deposit, such a one may be cited even though alone, and in the case of a loan on a request, one who was sent by the plaintiff as a messenger may be admitted as a witness though one only One by whom a deposit was duly placed, that should be proved by the (testimony of) him  
 25 alone, in the case of a dispute in regard to it, he alone, singly has been declared as good evidence, all this has a reference to a witness consented to by both For, like as in the case of many, so in the case of one consented to by both, the suspicion of unreliability is dispelled

Hence also Narada "Or one who is approved of by the two litigants, such a one although one only, may be examined as a witness in a Court' In this manner, it should be construed that the rule limiting the number, *viz.*, 'not less than three,' has a reference to witnesses other than the subscribing, the secret, and the one consented to by both as the alternative of a

1 Ch. VI 16

2 Ch. VII 17

3 *पठितः*—(see Ch. VII 4)4 Defined by Bṛhaspati Ch. VII 9 *गृह्य*5 See Bṛhaspati Ch. VII 6 for *परिचितः*6 See Bṛhaspati Ch. VII 7—*गृह्य*.7 See Bṛhaspati Ch. VII 10—*परिचितः*

less number has been allowed in the case of a witness assented to by both, as also in the case of a secret witness. Hence also the *Sahgrahakāra* "In all transactions, witnesses should be made commencing with three, there is a prohibition against two, or one, (unt) even one (may be admitted) when assented to by both." The meaning is that witnesses other than the subscribing and the secret should be made commencing with three.

In continuation of (the subject of) witnesses says Narada<sup>1</sup> "A Brahmana a Kshatriya a Vaisya, the Sudras also, who are irreproachable each one shall be witnesses for their own *varna*, or all again for all (*Varnas*)" The meaning is that when possible, the witnesses should be of the same *varna* as that of the person transacting. Thus in non-*varna* communities also, these should be of the same community as of the transacting person, vide the *Smṛti* of Yājñavalkya<sup>2</sup> "Each respectively according to their caste or class or all for all (castes and classes)"

The use of the words *Jāti* 'caste', is intended as inclusive (by an extension) of *Srenis* and the like also. Hence also Narada<sup>3</sup> "Among companies (of artisans or guilds of merchants), artisans or merchants shall be witnesses, members of an association, among other members of the (same) association, among those living outside persons living outside, and women (shall be) witnesses among women. Hence the Same Author<sup>4</sup> states an exception 'And if in a Company (of the citizens or guild of merchants) or in any other association any one happens to incur enmity (of his associates) their testimony shall not be (admitted) against him, for indeed they are all (his) enemies. The meaning is that among *Srenis* etc. those who entertain hatred against any one these shall not be witnesses against him. The use of the words *Srenis* etc. is intended to point to *Varṇa* etc. Also the use of the word enemy is intended by an extension to include those who have a motive to depose against facts.

Hence also Manu<sup>5</sup> "Trustworthy men of all the *Varnas* should be made witnesses in law suits men who know (their) whole duty and are free from covetousness, he should however reject the opposite (characters). Trustworthy : & others than cheats. 'The opposite,' : & who are interested in false causes, the meaning is that one should exclude these.

The Same Author<sup>6</sup> mentions these "Those must not be made (witnesses) who have an interest in the suit, nor *Ātītas* familiar (friends)

1 Ch. I 154

2 Book II 69

3 Ch. I 155

4 Ch. V 156

5 Ch. VIII 63

6 Ch. VIII 64-67.

companions, nor enemies (of the parties), nor men exposed as criminals, nor persons suffering under (severe) illness, nor those (morally) tainted. The king cannot be made a witness, nor the mechanics and actors, nor a *S'rotriya* nor a student of the *vedas*, nor (an ascetic) who has given up  
 5 (all) connection (with the world) nor one wholly dependent, nor one of bad fame, nor a *Dasyu*, nor one who follows forbidden occupations, nor an aged (man), nor an infant, nor one (man alone) nor a man of the lowest (*Varna*), nor one deficient in the organs of sense, nor one extremely grieved, nor one intoxicated, nor one tormented by hunger and thirst, nor  
 10 one oppressed by fatigue, nor one tormented by passion nor a wrathful man nor a thief. 'Who have an interest in the suit' : *i.e.* who have an interest in the point under dispute.

The *Āptas*, familiar (friends) however, have been pointed out by *Katyāyana*. 'Those who subsist upon (contributions made by) him, those  
 10 who do service to him or work for his benefit, those who are his relatives, friends, or dependents, *are his* *Āptas* (familiar friends) and therefore are not (competent) witnesses. 'Companions' such as sureties and the like 'enemies,' *i.e.* of any one of contending parties, 'Exposed as Criminals,' *i.e.* uncovered elsewhere as false witnesses, 'tainted *i.e.* convicted of  
 20 having committed a heinous sin (*Mahāpātaka*). A king is forbidden as he is engrossed in numerous occupations, 'an artisan' *i.e.* one who subsists on his art such as a goldsmith and the like, an actor, *i.e.* one who enters upon a stage, these two are prohibited as they are amenable to a money payment. *S'rotriya* here intended to be expressed is one who is intensively  
 25 devoted to the performance of (religious) acts and not a (mere) repeater of the *Vedas*, as such a one has been stated to be (admissible as) a witness. *Ingattho*, a celibate student and an ascetic also, 'one who has given up all connection with the world' *i.e.* a hermit, and the like. In regard to these *i.e.* the *S'rotriya* etc. the reason of a likelihood for them to  
 30 speak falsely is absent, still, their exclusion is to be understood on the strength of the express text. 'One extremely grieved,' *i.e.* who is afflicted by a mental disease 'one of bad fame (*śaktaiya*)', *i.e.* whose body has become deformed on account of leprosy or the like. *Dasyuh* *i.e.* one given to cruel actions, 'one who follows forbidden actions', *i.e.* one who does acts which are against the *Sāstras*. 'the aged,' *i.e.* one whose intelligence has deteriorated on account of oldage, 'an infant,' *i.e.* one who has not completed his sixteenth year, 'one,' *i.e.* he who is not followed by either of the two disputants, 'lowest', such as a *Chandāla* and the like, 'one

deficient in an organ of sense', such as the deaf and the like 'One extremely grieved, and the like, are clear. Their differentiation has been stated before, (the same) should be contexted here also Narada<sup>1</sup> also states those who should be avoided "A slave, an imposter, one not admitted to a *S'râddha*, the aged, a woman, an infant, a wheelman, the intoxicated, an idiot, a lunatic one distressed, one who sacrifices for the (entire) village One engaged on a long journey, a merchant who travels into transmarine countries, a religious ascetic, one who is sick, a couple<sup>2</sup>, one (alone), a *S'rotriya*, one who neglects the rules of daily conduct, a eunuch, an actor, an atheist, a *Vrâtya*, one who has abandoned the fire, and the wife, one sacrificing for those for whom a sacrifice must not be performed, and who has one plate; an associate, an enemy, a spy, a kindred or one connected by the same womb One who has formerly been discovered to be an evil doer, a public dancer, one who lives by poison, a snake charmer, a poisoner, an incendiary, a minor, the son of a *Sûdra* woman, one who has committed an *Upapâtaka* (a minor offence) one oppressed by fatigue, a ferocious man, one deserted, one penniless a member of the lowest<sup>3</sup> class, one leading a bad life, a student who has not completed his course of study, an idiot, an oilman, a seller of bread<sup>4</sup>, one possessed by a demon an enemy of the king, a weather prophet, an astrologer, a malicious person one who sells himself, one who has a limb too little, or a pimp, one who has bad nails or black teeth one who betrays his friends one suffering from white leprosy, a rogue, a vintner a juggler, an avaricious or cruel man, an enemy of a *S'reni* or of a *Gana*, one who takes animal life an idol<sup>5</sup>-maker, a fool, an outcast, a forger, a cheat, an apostate, a robber, a king's servant, a *Brâhmana* who sells human beings, poison, meat, bones, milk, water, and ghee, as also a twiceborn person who is guilty of usury, one who has swerved from his own duty, a *kudika*, an informer, one who is in the service of low people, one who quarrels with his father, one who causes dissensions, these are inadmissible as witnesses' 'An imposter' (*Naukrtilah*), who habitually picks holes in others. *Châkrîka*, a *Vantika*

1 Ch I 178-187.

2 बुद्धि another reading is बुद्धि, defective

3 विपन्न—another reading is विपन्न

4 बौद्ध explained further on (Text p 78, l 19) another readings is बुद्धि

5 विपन्न another reading is बुद्धि



(i.e. magician or a Minstrel), 'a transmarine trader', one travelling by a boat, (two) couples, particularised by duality The word *ekasthāli*— 'One has one plate', may be dissolved in two ways one for whom there is cooking pot along with one of the parties in dispute, or, one who has one plate for  
 5 dinner, i.e. cooking together, or in short eating together, 'an enemy spy' i.e. one who moves among the enemies, i.e. in short, one who is connected with the opponent

The *Sanābhayas* 'connected by the same womb' have been described by Kṣtīyāna 'The sons of the mother's sister, the sons of the uterine sister, and the maternal uncle, these are called uterine relations One should not appoint these for giving evidence as witnesses' 'A public dancer' i.e. an actor, 'one who lives by poison' i.e. one who is engaged in storing, preserving etc of poison 'a snake charmer,' i.e. the snake catcher, 'poisoner', one who administers poison. 'An incendiary', i.e. 'one who sets fire to a house,' a miser i.e. a niggardly person 'Oppressed by fatigue', i.e. dejected in mind, 'deserted' i.e. one who has been excommunicated, 'member of the lowest class,' i.e. born of a reverse union in marriage  
 15 'One leading a bad life' i.e. one whose conduct is vicious, 'a student who has not completed his study,' i.e. the celibate student who has taken a perpetual vow, 'an idiot' i.e. one with a dull intellect, 'an oilman' i.e. a sesamum crusher, i.e. in short, a great mechanic, 'a seller of bread i.e. the vendor of cooked viands, cakes etc, 'a weather prophet' i.e. one who prophesies rainfall, i.e. in short who judges by signs 'an astrologer', i.e. one who lives by a knowledge of the stars, 'a malicious person i.e. one who  
 20 brings out the faults of others, 'a pump i.e. one who for his livelihood, prostitutes his wife, 'a vintner' i.e. a seller of intoxicating drinks, 'a fool' i.e. one begging after taking hold (of an image) of a deity, 'a cheat' i.e. an imposter, 'an apostate', i.e. who has turned back from asceticism, 'an informer, i.e. one appointed by the king for the purpose of reporting  
 25 the faults of others, 'one who causes dissensions, i.e. a villain Others are well known

Kṣtīyāna also states certain persons (who are) inadmissible as witnesses "Members of the same family, as also persons having a connection, a son in law, the sister's husband the father, a kindred, the  
 5 paternal uncle, the father-in law, and the gurus likewise, those who are appointed to town, village, and the country, as also to positions (of authority) as also those who are favourites, one must not examine these (as witnesses), they are devoted and are king's men" The meaning is

that those (enumerated) commencing with the men of the family' and ending with 'the king's men, should not be asked to give evidence as witnesses. i.e. should not be admitted as witnesses.

Indeed, this extensive enumeration of non witnesses is profitless, as by the statement itself of the characteristics, the 5

AN OBJECTION incapacity of those who do not possess the characteristic<sup>s</sup> have been evidently proved. Yes, that is so. Still, where there is an absolute absence of witnesses as prescribed, there, one may have the evidence of any man as a witness, as has been

THE ANSWER permitted by the text a Manu<sup>1</sup>. "Not any one except in cases of urgency" in such a case the text "Not those having a connection with the point, nor the 'Aptas' etc have been set out thus this detailed statement has certainly a (justifiable) purpose. 10

In this way, moreover, it should be construed that in the absence of witnesses possessing the characteristics (as stated), the evidence as witnesses is prescribed only of those who are free from the prohibitions. Hence also of these a mention has been made by Vyasa. "An ordeal generally fails contrarily by (reason of) medications and charms, but never indeed can there be miscarriage (of justice) by witnesses nor vitiated by the existence of faults 15 20

As to what, moreover, has been stated by Manu<sup>2</sup>

PAGE 79\* But any one may give evidence for the disputants, who has personal knowledge (of the happening) in the

interior of a house, or in a forest or even in regard to (an act which resulted in) the loss of life, by a woman even when (proper evidence is) not available or by a minor, or by an aged man also, or by a pupil or by a *mitthu* even, by a slave or by a *sriya* (engaged on wages). 'Who has knowledge i.e. who knows about the matter as also by Narada<sup>3</sup> 25

'Those enumerated (above) to be inadmissible as witnesses such as slaves, imposters and others, may even be (admitted as) witnesses after realising the importance of the matter in hand. 'Importance of the matter i.e. in the absence of one knowing fully the matter in hand all this has a reference to specific acts, such as heinous offences and the like, as upon such happenings, men of the prescribed characteristics are difficult to be had. Hence also the *Sabrahakara*. 'When the best and those of middling (qualities) are not available, even persons prohibited may be admitted 30 35

as witnesses in (cases of) heinous offences, having regard to their connection with the time and the matter (under inquiry)'

In this connection *Uśānāh* states a special rule. "A slave a blind man, a deaf man a leper a woman, an infant, an aged man and the like—these even when not having any intensive connection, are admissible as witnesses in the case of a heinous offence' Not having any intensive connection i.e. without any friendly feeling or the like 'In the case of a heinous offence,' i.e. heinous offences and the like

If they have an intensive connection these must certainly be excluded in the case of heinous offences and the like. Hence also *Nārada* 'Among these also, not a minor, not one alone, nor a woman, nor a forger, nor a relative, nor also an enemy, (for) these may give false evidence' The meaning is, that among the slaves, imposters etc. even, those who are likely to have evil motives for (telling) an untruth, such as the minors etc. should be excluded

Those who have obvious motives for (telling) an untruth, have also been pointed out by the Same Author<sup>2</sup> "A child through ignorance, a woman, from want of veracity an imposter, from habitual trickery may speak falsely, (as also) a relative from affection, an enemy from (a desire for) wreaking vengeance." From want of veracity i.e. from a habit of want of veracity. By this it has been pointed out that the reasons are, ignorance, want of veracity, want of faith in *dharma* intuitively evident feelings of affection or hatred, and not minority etc. Thus, in the case of one even, the oneness is not the obvious reason for a falsehood (in the testimony), but on the other hand covetousness as says *Manu*<sup>3</sup> 'One if avaricious shall not be a witness' Thus it should be construed in regard to the cases of heinous offences that when the faults of ignorance, want of veracity, and the like exist, slaves and the like also should be cut out, in the absence of these (causes), however minors and the like even may be taken up

As to what has been stated by *Manu*<sup>4</sup> 'In all cases of heinous offences (*Sihavīs*), as also in cases of theft and adultery, and in cases of abuse and assault, one must not examine the (competence of) witnesses (too strictly), as also what has been stated by *Katyāyana* 'In cases of the breach of the King's command, of

1 Ch I 190

2 Ch I 191

3 Ch V III 77 Here there is a mistake in the print for एतद्विषयं read एतद्विषयं &c

4 Ch V III 72

adultery, as also of heinous offences, and also in cases of theft and the two kinds of violence one must not indulge (too much) in examining (the capacity of) witnesses," that negatives the testing (on the grounds) of a householder, and not also of the tests of ignorance, : c as it would conflict with the aforestated text.

As to what, moreover, has been stated by Kalyāyana "In cases of transactions of a stable character, such as relating to debts etc., one may examine (into the capacity of) witnesses in cases of violence and similar matters of urgent character also, an examination has been stated at some places," that is intended for laying down a rule as to the examination in cases of *Sāhasa* and the like, where upon a defeat there is the possibility of a heavy punishment, such as death etc., and also on account of the reason that being enumerated along with (cases of) debt etc and the non possibility of a general rule regarding the test as to the faults of ignorance etc

As to what has been stated by Yajñavalkya<sup>1</sup> "In cases of adultery, theft, insult, and a *Sāhasa* (a heinous offence) any person may be a witness," that also is intended for dispensing with the (rules as to the) examination of the merits (of the witnesses)

Thus in the *Smṛtichandrikā* the Characteristics of Witnesses

PAGE 80\* Now the varieties of Witnesses—*Sakshibhedah*

There Kalyāyana "One entered in a document, and another who is not a part<sup>2</sup> of it—thus a witness is connected in two ways" Prajapati also "A witness is of two varieties, made is one, and the other 'not made', one entered in a document is 'a made' and the other is called 'not made' 'One entered in a document : c such as a subscribing witness and the like To that effect Narada<sup>3</sup> "A 'subscribing witness one who has been reminded, a casual<sup>4</sup> witness, a secret witness and an indirect witness, thus a witness has been described in the *Smṛtis* as of five varieties.

1 Book II 72

2 अन्तर्गामी—Dr Jolly translates as an indirect witness This term has been variously interpreted and defined by Jyotishis, Harita and others e.g. Katyāyana is this ग लाम्ब य स मन्त्रमुद्राय विभक्त भगवान्पुत्राश्चन्द्रो मन्त्रपुत्रमिति ।

3 Ch I 150 See Jyotishis Ch VII 3 Katyāyana defines as follows —

अ र्था लक्ष्य मीदा दो र्त्तमो मनिद यो म म म निदिगो नम र्त्तमि न पत्रकारः ।

4 बहुउपनिवृत्त —Dr Jolly 'jointaneous witness' Katyāyana describes him as समन्तदृग्ग

Likewise the varieties of witoesses 'not made' have also been pointed out by the Same Author.<sup>1</sup> "A witoess 'not made' has been described by the sages to be of six kinds. The village, the chief Judge, the king, one who has inside knowledge of the transaction as also one  
5 who has been deputed by the elumant, and the members of the family, may also be witnesses to family disputes."

There, presently Brhaspati<sup>2</sup> states the characteristics of witnesses 'made'.<sup>3</sup> "One who has entered in a deed his caste, the name of himself, and of his father also, as also his place of residence, is  
10 called a *Subscribing* witness. One who after being invited to be present at a transaction of debt, deposit, purchase, or the like, was made a witness, and who is repeatedly reminded of it, is called a witness who is reminded. While a transaction was being concluded, one who had arrived by himself, and declares that 'the attestation was mine' is called a witness *by chance*.<sup>4</sup> One who, screened behind a partition, is  
15 made to hear the declaration of the debtor, and denies that occurrence is called a *secret* witness. Where a person, while about to go abroad, or being on the point of death, communicates to another what he had heard, that witness is called an *Uttara* witness."

20 In regard to a subscribing witness, however, Harita states a special rule. "Even after a long interval a subscribing witness may establish the fact, he may write himself, if literate, and if, however, illiterate he may have it written by another."

As to what has been stated by the Same Author viz. "Of a 'reminded' witness, the evidence can establish a fact as far as the eighth year, similarly the evidence of a witness who had arrived by chance can establish the fact as far as the fifth year, so of a secret witness the fact can be proved upto the third year, and of the *Uttara* witness within one year," that should be understood to have been stated as the contention of the first  
25 position, since the Same Author says later on "Nor there has been observed any limit of time in regard to witnesses, for men knowing the *Sastra* declare witness evidence as dependent upon their memory. A witness whose intellect, memory, and ears have not been blurred, such a one deserves to be admitted as a witness for giving evidence even after (the  
30 lapse of) a very long time."

1 Ch V 151-152

2 Ch II. 3, 6, 9, 10

3 इत्यर्थः

4 दृष्टान्तः For Dr Jolly's translation see S B L XXXIII p 300 § 9

By Brhaspati also, witnesses 'not male' <sup>1</sup> have been described  
 'Where anything is spoiled or damaged on the boundary line, even though  
 not appointed, the village may undoubtedly (be admitted to) give evidence  
 in such a case (15) Where, after a suit has been decided, a fresh trial takes  
 place, there the chief Judge, together with the assessors may be (admitted  
 as) witnesses, and not in any other case (14) Where the statements of the  
 plaintiff and of the defendant have been heard by the King himself, he may  
 offer himself as a witness, if there be disagreement between the two (13).  
 Where by both the parties, an affair has been placed in trust and  
 communicated also, such a one may be known as a witness holding the  
 secret, as well as a common witness (12) One who hears the statement  
 of the plaintiff and the defendant, who has been deputed as assented  
 to by both as a respectable person, is denominated a  
 messenger witness (*Ditakah*) (8) At the time of a  
 partition gift or sale, where a member of the family  
 is appointed by both parties being connected and on good terms with both  
 parties and knowing the Dharma such a one is known as a family  
 witness (9) "

As to what has been stated by the Sam<sup>a</sup> Author <sup>2</sup> viz "A subscribing  
 witness, one caused to be written, a secret witness, one who has been  
 reminded, a member of the family, a messenger, a spontaneous witness an  
 indirect witness a stranger who has accidentally witnessed the deed, the  
 King the chief Judge, and (the people of) the village, thus have the  
 twelve kinds of witnesses been declared' that has been stated as in  
 reference to other varieties of a subscribing witness in relation to the name  
 etc and the writing of the maker and of the person causing a document to  
 be made "A witness has been stated to be of eleven kinds by wise men  
 in the *Sūtra*," so has been stated by Narada <sup>3</sup> in spite of him

Here ends ( the chapter on ) the varieties of witnesses

Now the kind of Incompetent witnesses *Asakshibhedah*

There Narada <sup>4</sup> "The incompetent witnesses have in law books,  
 been mentioned by learned men to be of five sorts viz (witnesses  
 who are incompetent) on account of (a special) text of law, on  
 account of depravity of contradiction, on account of a voluntary

1 अग्र-ग्रह Dr Jolly s ed ti n p 300 Nos 15 14 13 1<sup>o</sup> 8 and 7

2 Ch VII 1-2

3 Ch I 149

4 Ch I 157

effect, and there being no definiteness, such a witness is incompetent on account of the intervening death. The use of the word plaintiff is by an extension to indicate the defendant, so also Vyâsa. "Where the plaintiff is not in existence, then the witness is one after an intervening death, or where the defendant is dead, there also a similar rule should be applied". The meaning is that when the plaintiff or the defendant is dead, his witness other than the one cited by the dying man is called a witness upon an intervening death. "When the plaintiff is dead and another is cited after death without being cited by the dying man" vide this text of Narada. The use of the word 'dying' is intended as indicative by an extension also of one in normal health. Hence also Another Smṛti. 'If a point has been communicated even by one who is sick, if it is well posted according to law, even if he be dead, in such a case a witness may be admitted in the case of six transactions such as an *Amāhuta* and the rest. Thus,

moreover, what has been stated in Another Smṛti. 'In

PAGE 82 the case of a deposit, an *Amāhuta*, a thing sold, or robbed, or given or delivered on a request, as also in

the case of a debt repeated by a dying man one may interrogate a witness at the intervening death, that is intended to convey that the testimony of one who has been made to hear the point is not wiped off even if the plaintiff who communicated it be dead, and not for laying down a rule that any witness may be admitted at times even after an intervening death, because a witness after an intervening death is impossible.

As the capacity of one as a witness who has been made to hear the point is not lost, so also when there is a diversity among witnesses, the capacity as witnesses of the highest class certainly remains undisturbed also. To that effect also Yajñavalkya. 'Upon a disagreement, the testimony of the majority prevails, similarly, if the witnesses are equally divided, the evidence of the virtuous if, however the virtuous disagree, the evidence of those who are most virtuous should be accepted (as conclusive)' Sangrahakāra states its meaning. 'Either by regard to majority, or a disavowal of the qualities, should a decision be reached when there is a disagreement among the witnesses, if these are equally balanced there is no finality. The meaning is, that the incompetency of witnesses upon the ground of uncertainty is only when preference to a particular ground is not given among the two sets. As to what has been stated by Katyayana. "If from among the subscribing witnesses who have been declared by the plaintiff,

of maintenance, returned to their (original) home, and approached a Court of law for the determination of their dispute. There one states on affirmation 'This land was donated to me by King Harishchandra of blessed memory, when he was anointed as a king and therefore this land is mine alone.' Or, the affirmation of the other is in this way 'True, by Chandra of blessed memory the land was donated to him, but, however, it was obtained by purchase from him by Harishchandra and was donated to me, thus it is mine only.' Witnesses also are available for both. In such a case this text<sup>1</sup> is stated viz "of two persons quarrelling &c".

This is the meaning. The party who was first in the dispute; whose side has priority on account of the statement of his claim based on a donation at a prior date, his witnesses shall be examined by the assessors first, and not the witnesses of the other. These are (regarded) almost incompetent witnesses, as they would be deposing to a donation at a later date. When, however, it is alleged by the other party that, 'After obtaining by purchase it was donated to me, and the like', the case of the first claimant is cast down, and becomes powerless, then the witnesses of the party making a later declaration on affirmation should be examined, and not of the party making the first affirmation, as it would be useless to establish what has been proved, but on the other hand, these should be ignored as incompetent witnesses.

Thus in the *Smṛtichandrikā* the kinds of Incompetent Witnesses

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Now the exhibition of Witnesses—*Saksbyudbhāvanam*.

There Gautama<sup>1</sup> "In disputed cases, the truth shall be established by means of witnesses." The import of this is that after the answer (is filed), if there be witnesses, these should be pointed out by the plaintiff. These, moreover, after they are declared if they are faulty, then they should be condemned. To that effect *Brhaspati*<sup>2</sup> "When witnesses are summoned by the Plaintiff, if these are faulty, one may expose the faults. A litigant trying to cast a blemish on the faultless (witnesses) is liable to incur a fine of an amount equal to it." 'Equal to it', i.e. equal to the penalty for a faulty witness. Those causes, such as hatred etc. on account of which incompetency as witnesses has been stated, these are the faults of a witness. The meaning is that these if they be concealed in the witnesses cited by the plaintiff, then these should be exposed by the defendant.

1 Of Nārada Ch. I, 163 (see above p 152)

2 See Ch VII. 24

2 Dh S Ch XIII. 1.



3 If, however, they are obvious, then these should be declared by the assessors themselves. To this effect also *Katyaiana* 'The defects in the (manner of) proof, whenever they exist should be declared by a disputant, but the concealed defects must be made public at the time by the members of the Court, by a reference to the *Śāstrā*. 'In the proof, i.e. in what is adduced as proof, 'at the time', i.e. at the time of the decision.

5 To that effect *Bṛhaspati* "After the witnesses have given their evidence and a decision has been given, if one starts a dispute again the king should consider it". 'Have given evidence', i.e. by those witnesses cited by the plaintiff. The meaning is that when the decision had been declared by the members of the court upon the evidence of witnesses who are 'devoid of obvious faults'. The use of the word, 'has been declared' is intended to demonstrate that after the decision, is not the time (proper) for the faults to be pointed out. Hence also *Katyaiana* 'Whatever faults there may be in the documents as well as the faults in the witnesses, as have been stated in the *Smṛtis*, must be declared at the time of the trial after a statement has been made, one must not allege faults in the deponents'.

15 For one pointing out a fault after a statement had been made the Same Author states a penalty: "After a witness has made his statement in regard to the matter in issue, if one attempts to find fault with witnesses not challenged before, and also does not state the reason for so doing, he shall be mulcted in the first amercement."

20 One must not charge him as false or as wanting in the qualities (such as) of a householder etc., as says the Same Author. 'One must not challenge the evidence by untrue allegations, he may, however, challenge with faults only, if the accusation be false, he shall be punished, and shall lose the claim also'. He should challenge with faults only, and not on the ground of an absence of merit. The import is that such a charge cannot destroy the reliability of oral evidence.

25 Hence also, in cases of urgency, the testimony of a witness other than of those prohibited has been stated to be admissible although he is not possessed of the qualities. Therefore, it should be understood that in cases regarding debts etc., not merely by the allegation of the absence of qualities, are the cited witnesses to be declared incompetent but on the other hand, by alleging the existence of circumstances such as slavery etc. which are the causes of exclusion. In cases of a *Sāhasa* or the like, not by that even, but on the other hand by the allegation of faults such as ignorance, want of veracity, and the like faults only, thus it should be construed.

Hence also, the incompetency of a witness by the exposition of the faults has been stated by Vyasa also ' The faults of witnesses should be openly declared in the court by the defendant by putting these all in writing on a parchment , and a replication to these should be caused to be made , upon an admission (of these) they do not deserve to give evidence at any time , if otherwise, these should be established by the defendant by means of proof " ' Admission,' : e admission of the fault , 'by means of proof,' : e the implication is, other than witness evidence For, to that effect, the Same Author ' The fault alleged against the first (set of) witnesses if (allowed) to be established by other witnesses, there would be the fault of unsettledness owing to the possibility of these also to be challenged by means of others Thus the demonstration of a defect (in a witness) must not be (allowed to be) made in regard to a defect which is obvious, as it would be pointless But, on the other hand such assignation of a fault should be made by the members of the Court alone , so says the Same Author ' That which is well known to the members

PAGE 84\* of the Court or that which is well established in the world either, such fault in the witnesses may be admitted by regard to the description of the defect, as it is not likely to be proved (by evidence) ' ' May be admitted,' : e by the judges 'not likely to be proved,' : e by the defendant for here on account of the well known character of the faults which have been alleged, their exclusion is established (by itself)

Where, however, an allegation is made of a defect, ( which is ) not well known there, if that is not proved ( by evidence ), the Same Author states a penalty " If the defendant do not clearly establish (the defect), he should be made to pay a penalty the witnesses against whom the fault is proved, should be excluded, as from them the privileges of the witnesses have been refuted ' ' Clearly, : e in such a manner as not establishing the fault of the witnesses , the import is that the witnesses against whom the fault has been established should be dropped, but not punished

After the witnesses have been dropped if the plaintiff does not contemplate other proof then he is (regarded as) defeated, and should be punished , so says the Same Author " When defeated, he should be compelled to pay (the amount in dispute) together with a penalty ' If the plaintiff does not contemplate another proof in accordance with the procedure stated in the *S'istras* when placed before the witnesses and the members of the court , 'does not contemplate' : e (resorting to) another mode

of proof The import is that if, however, he intends (to prove), then in the absence of human proof, success may be reached by resort to divine proof even To that effect *Bṛhaspati* "When a fault is alleged against a witness, the witnesses first cited should be (got declared as) cleared, after the  
 5 witnesses are cleared, thereafter with them one should try the cause" 'With them' i.e. with (the evidence of) the cleared witnesses By this it comes to be stated that the dispute about the defects in the proof should be decided during the course of the original trial, and not at a time subsequent to the first suit, like as a decision and a fresh trial, as a decision about a  
 10 dispute regarding defects in the proof, must be given in the same suit, as it is dependent upon the first trial, as also there is no different result, and also as there is no different proceeding For the Same Author<sup>1</sup> says "A party whose document or witnesses are impeached in a dispute, his cause will not succeed, so long as he does not remove the objections" *Vyāsa*  
 15 also: "So long as a dispute regarding all the witnesses arising in the course (of the trial) does not reach a decision, till that time one should drop the (evidence) first (adduced) In regard to the establishing of the defects of a witness whether by the defendant or by the plaintiff, there is no need of an accusation against the witness, for in that case, there would be a  
 20 separate trial" Therefore, it has been established that the decision about the defects in the proof must be made in the course of the original suit only.

Thus in the *Smṛtichandrikā* the Setting up of Witnesses

### The Testing of Witnesses—*Sākṣhparikṣā*

There *Kātyāyana* "The king having asked for evidence, should  
 25 deliberate over it according to the principles of justice, the documents, according to the customary rules about documents, and the witnesses in accordance with the usage about the evidence of witnesses" 'By the customary rules about witness evidence,' i.e. by all the characteristics of witnesses Here *Bṛhaspati*<sup>2</sup> 'Witnesses, who may be examined as also  
 30 those basest of mankind who must be excluded I shall now mention these as stated in the *Śāstras*' There, presently, He states<sup>3</sup> those who should be examined "These witnesses should be those who are always engaged in observing the performances prescribed in the *Śruti*s and the *Smṛti*s, absolutely free from the feelings of covetousness and hatred of  
 35 respectable parentage, irreproachable, and zealous in performing austerities, practising liberality, and exhibiting sympathy (with all living creatures)"

Likewise, the Same Author<sup>1</sup> states these who should  
 PAGE 85\* be excluded 'The mother's father, the father's  
 brother also, the wife's brother, and the maternal  
 uncle, the brother, a friend, the son in law, are inadmissible (as) witnesses  
 in all (kinds of) dispute Also persons addicted to adultery, or to drinking, 5  
 gamblers (rogues), persons declared unfit<sup>2</sup> before, the insane, the  
 suffering, violent persons, and unbelievers, cannot act as witnesses"

Moreover, this statement of proper and improper witnesses is intended  
 to exhibit the admissible and inadmissible witnesses as stated by Manu.  
 Nārada and others, hence also has it been stated that 'as mentioned in the 10  
 Śāstras' Likewise, the Same Author states that witnesses may also be tested  
 from their voice etc "Those who often appear should be examined  
 having regard to their voice, colour the internal working, and the like".  
 Among these, those who are free from any temperamental bias should be  
 eligible as real witnesses, those, moreover, who are affected by any 15  
 temperamental bias should be known to be false witnesses

Hence also Manu<sup>3</sup> 'Of the infants, aged men and diseased persons,  
 speaking falsely, the judges should consider their evidence untrustworthy,  
 likewise of persons with disordered minds' 'With disordered minds', : c  
 unsteady Viṣṇu<sup>4</sup> also "By his altered looks, by his countenance chang 20  
 ing colour, and by his random and irrelevant talk, one may know (him to  
 be) a false witness' Nārada<sup>5</sup> also One, however, who, feeling  
 conscious of his own guilt, looks as if he was not well, moves from (one)  
 place to (another) place and runs after every one (193), who walks  
 irresolutely and without reason, and draws repeated sighs, who scratches 25  
 the ground with his feet, and who shakes his arms and clothes (194)  
 Whose countenance changes colour, whose forehead sweats, whose lips  
 become dry, and who looks above and about him (195) Who as if he is  
 in a hurry, unasked, talks too much such a person should be recognised as  
 a false witness, and the king should punish that sinful man severely' 30  
 Yājñavalkya<sup>6</sup> also "One who shifts from one place to another place licks his  
 lips, whose forehead perspires whose countenance also changes colour (13),  
 who has a stammering and incoherent speech, talks inconsistently and

1 Ch VII 29-30

2 *सर्वत्र* Another reading is *सर्वत्र* persons who calumniate everybody (Jolly)

3 Ch VIII 71

4 Ch. VIII 18 S B E Vol VII p 50

5 Ch I 193-196

6 *आत्मवद्वेषात्*—another reading is *आत्मवद्वेषात्* weighed down by the  
 consciousness of his own guilt. 7 Book II 13-15

too much, who does not respond to the speech or gaze of others, and who, moreover, bites his lips (14); who exhibits by his own movements a perturbation of the mind, speech, body, and action, is declared to be defective and unfit to be a complainant or a witnesses (15)".

- 5 Thus if witnesses appear who are free from the defective signs, and also are endowed with the qualities for a (proper) witness, then one should come to a decision, with (the help of) these: and if they are otherwise, then by other means of proof.

Thus ends the Testing of Witnesses.

- 10 Now the Law as to charging the witnesses—*Sākṣhyanyujānsvidhiḥ*. There *Mān*<sup>1</sup>: "In the court room, in the presence of the plaintiff and the defendant, the Chief Judge should charge all the witnesses in the following manner, after kindly exhorting them". The meaning is that, according to the procedure hereafter to be stated, one should charge all the  
15 witnesses i. e. should make them prepared for stating facts.

- He<sup>2</sup> states the same procedure: "What you know to have been mutually transacted in this matter between these two men, before us declare all that in accordance with the truth; for you are witnesses in this cause (80). Evidence in accordance with what has actually been seen or heard, is  
20 admissible: a witness who speaks the truth in those (cases), neither loses spiritual merit, nor wealth (74). A witness who speaks the truth in his evidence, gains (after death) the more excellent regions (of bliss), and here (below) unsurpassable fame; such testimony is respected by Brahman (himself) (81). Or (as) a Brāhmana is among men, or the Sun among the  
25 luminous, or the head among all the organs, so truth is the best of all Dharmas (82). By truthfulness is a witness purified;  
PAGE 86\* through truthfulness the religious merit increases:  
truth must, therefore, be spoken by witnesses of all the

- varnas* (83). The man who, while giving evidence, a learned husbandman  
30 does not feel any doubt, Gods do not regard any other man in this world as superior to him". 'Or a Brāhmana' i. e. like a Brāhmana; similarly in the expression, 'or the head', the word 'or' (*or*) should be taken as indicative of the standard of comparison. The meaning of the last verse is that the witness, while he is giving evidence, a learned witness does not entertain  
35 any doubt (about him), the gods do not regard any other man in this world as superior to him.

Nareda<sup>1</sup> also 'Truth is the greatest gift truth is the highest austerity, truth is the highest duty for the people so says the Sruti (214) The Gods are collecting truth, while men have been stated to be collecting falsehood In this very world does one obtain divine emmence whose mind is permanently fixed in truth (215) There is no higher virtue than veracity, nor a heavier crime than falsehood In regard to his duty as a witness therefore, one must speak the truth alone (226)

Vyāsa also "For those appointed to give evidence the divinities await in heaven, and his ancestors also lie suspended out of fear lest he may state a falsehood By truthful statements they go high up, otherwise, however, they go down therefore, truth should be stated by you in the presence of the members of the Court

Manu<sup>2</sup> also "He who gives false evidence is bound fast by Varuna's fetters helpless for one hundred births therefore a witness should speak the truth (82) The soul itself is the witness of the soul and the soul is the ultimate God of the soul despise not thine own soul, the supreme witness of men (84) The sinners indeed, think in their minds 'no one whatever sees us', but the gods thoroughly observe them, as also the inner men in them (85) The sky, the earth the waters the heart the Moon, the Sun, the fire Yama, and the wind the night, the twilights, justice also, know the conduct of all corporal beings (86) 'A hundred births is as long as a hundred (of) births

Nareda also 'Kubera the Sun Varuna Sakra Vaivasvata and the rest, as also the guardian deities of the world observe perpetually with divine vision The import is that therefore deception is not easy Utathya also That witness who gives false evidence in this world undoubtedly he certainly carries the seven generations on both (sides) to the lowest place Whatever sin has accumulated for seven births in the body, one who gives false testimony takes all that in entirety' Brhaspati also 'A false member of the Court and a false witness, and a Brāhminicide are stated to be equal (in sinfulness) a feticide, and also a robber are not declared to be more sinful than these' Manu<sup>3</sup> also 'A witness who deposes in an assembly of the Aryas anything else than what he had seen or heard falls headlong into hell after death and also loses heaven' Vasishtha<sup>4</sup> also If thereafter he speaks falsehood he goes, when dead to hell with impurity all around to eat, and thereafter he goes into the lower species The meaning is that he goes to a hell which is full of impurity to eat

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Kātyāyana also : "With his neck tightened round in the death noose, intensely suffering from the hammering of the mace, the servants of Yama, being enraged, carry him to a place full of thorns. Being tormented by the strokes of the multitude of sword blades, and the close embrace of the  
5 silk cotton tree, he goes to the terrible river overflowing with pus and blood." 'With his neck tightened in the death noose' i.e. with his neck tied round by black iron chains.

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Nārada<sup>1</sup> also : "And in the hells the fierce attendants of Yama, endowed with great strength, will cut off thy tongue and strike constantly  
10 thee with swords (217) ; and having thrust you upon a pike while you are hopelessly wailing, they will lift you up and fling you head downwards into the lake of fire (218). Oppressed by the torture of the iron mechanisms and the like, and by hunger and thirst likewise, he is thrown out into a terrible hell causing intense suffering".

Uśānā also : "With the mouths dripping on account of an iron vulture being thrust into their mouths and eyes, they fall in the densely dark hell bewildered by their sins". Pitāmaha also : "Rendered unconscious on  
15 account of the cutting off of the tongue by the red hot prong at the end of the staff, the attendants compel him to fall into the most terrible hell".

Vyāsa also : "Witnesses who give false evidence are fastened by the chains of Varuna, and stay for sixty thousand years in hell continuously; of these, upon the completion of a hundred years, one chain is released; and in course  
20 of time, after he is freed from the fetter, (he) is born in the lower species".

Nārada also : "For one *Kālpa*<sup>2</sup> would a false witness stay in the  
25 Arichi hell, as also those who deprive others of their wealth, and the kings who are irreligious, after having experienced for a long time the hell pangs under intense sufferings, go in this world into the lower species such as vulture, crow, and the like".

Varaṇḍa<sup>3</sup> also : "For ten years, a hog ; a hundred years, a donkey ;  
30 and a dog for twelve years, and a vulture for twenty years ; in the species of worms, insects, gnats, for twenty years ; while a deer, for ten years ; and thereafter he is born a human being. Of the human form which he gets, such a one becomes mute, and blind also ; while poverty will be his for births and births again and again".

\* 1 Ch. I. 217.

2 मय—A day of Brahmā or 1000 yugas, being a period of 432 million years of mortals ; and measuring the duration of the world. (Apte)

3 App. Varas 5-7.

Vyâsa also 'Afterwards is he born a human being entirely abandoned by his kindred, lame, blind, deaf mute, a leper, naked, and oppressed by thirst, (always) hungry, he begs at the house of his enemy along with his wife, having realised the evil effects of a falsehood and appreciated the virtues of truth, it is always beneficial in this and in the next world there fore one should speak the truth (when giving evidence) as a witness' 5

The warning should be given in this manner and this only, and not with those compiled by other men, since says Nārada<sup>1</sup> "By ancient sacred texts, extolling the excellence of truth and denouncing the sinfulness of falsehood, he shall even inspire them with fear" The meaning is that the witnesses should be inspired by texts of the Rshis, containing comments in the form of statements of facts accompanied by a praise of these, and by means of texts prohibiting false statements closely connected with the unavoidable results of sin, and make it even terrible looking (for them) 10

Thus in the Smṛtichandrikâ the Law regarding Charging the Witnesses 15

Now the Law as to Putting the Questions to witness Sakshyaprasnavidhî

There Manu<sup>2</sup> 'In the presence of the Gods and the Brahmanas, either facing the North or with their faces towards the East, in the forenoon being purified, one should ask the pure twice born to give true evidence' -

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20

The word 'twice born' is indicative by implication, of persons appearing as witnesses as will appear from the adjectives used Hence also, Nārada<sup>3</sup> "After having summoned the witnesses of tried integrity and conversant with the circumstances of the case and having bound them firmly by an oath he should examine them each separately The meaning is that by means of terror-inspiring oaths having brought them over to be bound to truthfulness, should examine each 25

These oaths also have been pointed out by him<sup>4</sup> "He should ask a Vipra to swear by the truth, a Kshatriya by his conveyance and weapon a Vaishya by the cow, grains and gold, and a Sudra by all sorts of these sins 30 The meaning is that by pointing out (the possibility of) the destruction of truth and the like desired objects the Vipra and the like and by pointing out the evil effects hereafter to be stated, the Sudras

1 1 Ch. 100

2 Ch. VIII 87

3 Ch. I 106, 4 Ch. I 193

4 *pr*—lit question affirmation expresses the full connotation of the word *pr* in its present back ground Examination after affirmation

In regard to the affirmation, however, a special rule has been stated by Manu<sup>1</sup> 'Speak', thus he should ask a Brāhmana, 'speak the truth', a Kshatriya." In this manner, moreover, the question should be understood to indicate that 'if you speak falsely, your (merit arising from) truth will perish' In the case of the question to a Vaisya, however, there being no particular (form) stated in the Smṛtis, he should be warned and restrained by an oath thus 'If you speak falsely you will be deprived of your kine, grain, and gold'

In regard to the Sūdra, however, the method of affirmation has been set out at details by Manu<sup>2</sup> thus "Whatever places are assigned by the sages to the slayer of a Brāhmana, to the murderer of women and children, to him who betrays a friend, and to an ungrateful man, those shall be thy portion if thou speakest falsely (89) The reward of all meritorious deeds which thou, O good man, hast done since thy birth, shall become the share of the dogs if in thy speech thou departest from the truth (90) If thou thinkest O friend of virtue, with respect to thyself, 'I am alone', know that the Sage who witnesses all virtuous acts ever resides in the heart (91) If thou art not at variance with that divine Yama, the son of Vivasvat who dwells in thy heart, thou needest neither visit the Ganges, nor (the land of) the Kṛnuṣ (92) Naked and shorn, tormented with hunger and thirst and deprived of sight, shall the man who gives false evidence go with a potsherd to beg food at the door of his enemy (93) Heidlong, in utter darkness, shall the sinful man tumble into hell, who being interrogated in a judicial inquiry, answers when questioned, falsely (94) That man who in a Court of justice gives an untrue account of a transaction or asserts a fact of which he was not an eye-witness resembles a blind man who swallows fish with the bones (95) Learn now, O friend, from an enumeration in due order, how many relatives he destroys who gives false evidence in several particular cases (97) He kills five by a false testimony regarding small cattle, he kills ten by false testimony regarding kine, he kills hundred by false evidence concerning horses, and thousand by false evidence concerning men (98) By speaking falsely in a cause regarding gold, he kills the born and the unborn, by a false evidence concerning land, he kills everything Beware, therefore of false evidence concerning land (99) They declare false evidence concerning water, concerning sexual enjoyment with women, and concerning all gems produced in water, or

consisting of stones to be equally wicked as a liar concerning land (100) Marking well all the evils which are the results of false testimony, declare thou openly everything as thou hast heard or seen' (101) 'Kuru' i.e. the land called Kuru 'Openly' i.e. with a pure heart

Here, some hold that the three verses beginning with 'Naked and shorn etc' should be taken out and included in the rules regarding the charging of a witness, and that otherwise there would be a difficulty in arranging the connection, in that case it should be understood that after the expression 'Thou needest not visit the Kurus' &c., the verse commencing with 'How many relatives etc' should be recited 10

This rule regarding the affirmation of a Śūdra should also be used in regard to the twice-born who carry on a lower mode of life (even) in times of non-distress, as it is not possible to restrain them by light affirmation. Therefore also says Manu<sup>1</sup> "Bṛāhmanas who tend cattle, who trade, who are mechanics actors, or singers menial servants, or usurers, one should treat these like Śūdras. Those who have fallen off from their proper duties who subsist upon the food of others, and still aspire to have the status of the twice born, one should treat them also as Śūdras" By saying 'aspire to have the status of the twice born' the author points out that the mode of affirmation should be not like that of the twice born, as e.g. in the case of Ambashthas etc. but like that of a Śūdra 15 20

Thus ends the law as to the Affirmation of witnesses

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Now the law as to the Recording of witness evidence—Śāṅkhyawādaiddhiḥ

There Kātyāyana 'Witnesses should give their evidence while inside the Court premises, and not anywhere else. This rule is applicable to all witness evidence otherwise than in regard to immovable property. Otherwise, i.e. than at the immovable property, for, to that effect says the Same author "Depositions should be taken down near the subject matter in dispute, and in some cases even in places other than these two, this is the rule in regard to disputes about quadrupeds, and also immovables also" 'Of these two,' i.e., at the aforesaid two places, the meaning is that 'even without these two places', 'on occasions', i.e. in disputes about murder may be given 25 30

To that effect, the Same author "If it be a trial regarding the destruction of living beings, witness evidence may be taken near the dead body, but in its absence, of any mark but when it is otherwise, the witness should not be made to depose at all" 'Of the mark', such as of

5 a horn &c

✓ Vasishtha states the mode of recording witness evidence "Sitting on the ground with his face turned towards the East and duly affirmed by oaths appropriate to him, touching gold cow dung, and the *darlha* grass, one should speak the truth" Brhaspati 'nis> "After keeping off the shoes and the upper garment he should raise up his right hand, and after having taken up gold, cow dung, and the *darlha* grass he should speak the truth" 'Raise the right hand, i.e. the meaning is that he should place his covering cloth in a position like the sacred thread, to the right direction

15<sup>1</sup> 'He should speak the truth', to this Manu<sup>2</sup> states an exception on some occasions "Whenever the death of a Śūdra, of a Vaisya, of a Kshatriya, or of a Brāhmana, would be caused by a statement (of the truth), a falsehood may be deposed to for indeed that is preferable to death" Brhaspati also 'Where a Brāhmana has been guilty of a first offence, or has been oppressed by adversity, or is about to be killed by warriors or the like, one may give him protection even by speaking a falsehood' Here, by the use of the word "api" 'even', it appears that it is intended to indicate that by speaking untruth some sin is incurred Hence also Yājñavalkya<sup>3</sup> states a penance 'Where one of the four orders are likely to suffer capital punishment, there the witness may speak an untruth for purification from that sin a special oblation of rice known as the *Sīrasvata* should be presented by the twice born" Manu<sup>4</sup> also 'Such witnesses must offer Sīrasvata oblations of boiled rice which are sacred to the Goddess of speech, performing the best penance in order to expiate for the guilt of falsehood Or such witness may offer in accordance with the rules clarified butter in fire reciting the Kūshmāṇḍī Rks, or a Rk sacred to Varuna viz *Udityam* &c or with three lās addressed to the water deity' Vishnu<sup>5</sup> also 'For the purification, of that, the twice born should offer oblations into the fire with the Kūshmāṇḍī Rks A Śūdra, moreover, should offer a mouthful for

25 a day to ten cows'

1 Ch VII 23

2 Ch VIII 104

3 Book II 83

4 Ch VIII 102-106

5 Ch VII 16, 17

As for what has been stated by Gautama<sup>1</sup>, viz. 'No sin is incurred by giving false evidence in case his life depends thereon', as also what has been stated by Vyâsa<sup>2</sup> "What is said in jest, does no harm or to women always, or at the time of a marriage, or when life is in danger, or when the entire property is being robbed, falsehoods on these five occasions are 'sinless', of these two texts the meaning is this. The aggravated character of offences stated in the texts commencing with particularly in regard to 'the witness etc', that does not apply here, otherwise it does apply

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To that effect is Gautama<sup>3</sup> "Witnesses shall not speak otherwise than when together, nor when they are not asked and if when asked they do not depose, they will be guilty of a crime" By the use of the word, 'and', *Cha* it appears that an addition is implied, viz. 'if they speak falsely', as has been stated by the commentator. The prohibition as regards speaking outside the company has application only where witnesses are cited collectively, and not always. Since says Varadha<sup>4</sup> "What has been seen by persons collectively, should certainly be deposed to in the same manner. Where an affair has been transacted separately, that may be deposed to separately by each. Also where a matter has been known by the witnesses at different periods, in such a case each one should be separately examined, the law has thus been proclaimed

Here ends the Rule as regards the Testimony of witnesses

Now some texts regarding the deposition of the witnesses.

Then Katyayana "Whatever has been stated naturally by the witnesses should be accepted as made, free from any blemish, when once witnesses have deposed they should not be questioned again and again by the King. Manu<sup>5</sup> 'What witnesses declare quite naturally, that must be received at trials. Since what they speak differently is worthless for the ends of justice'

1 Dh. S. Ch. VIII 24

2 Mahabharata Santi Parva (XIII) Ch. 103 30 Marka Parva Ch. 72 24  
Adi Parva Ch. 76 24

3 CL. XIII 3-6

4 Ch. VIII 78

5 Appendix 3-6

Nârada<sup>1</sup> also explains the meaning of 'worthless' "Where in regard to causes which have been indicated, witnesses have arrived for giving testimony, and a witness does not make a consistent statement with reference to the question under notice, his testimony is as good as ungiven." 'Upon having arrived for giving testimony' : i.e. at the time of giving testimony, a consistent statement' : i.e. in accordance with the statement, in short, what he was asked. By this it has come to be stated that a statement which supports anything unasked is useless. To that effect, the Same Author<sup>2</sup> says "Where witnesses depose as to a sum which is too low or too high, that also should be known to be no evidence, this is the rule as to witnesses." 'Where : i.e. in regard to disputes of almost permanent<sup>3</sup> character such as relating to debts etc. To that effect is Kâtyâyana. 'In [disputes about recovery of debts and the like, which are of a permanent character, if witnesses depose to more, or less, than the amount declared, the claim does not become established'.

If the testimony of witnesses which is invoked is a means of establishing the matter under affirmation be less or more, then it is certainly liable to create suspicion, the meaning is, that it will not be accepted as proof (even) for a portion of the point affirmed. From this text itself it should be understood that if the depositions of witnesses who are called in support of a portion of the matter under affirmation fall below or exceed the point, they would be equally regarded as non evidence, as it has been generally stated that the point at issue does not become established.

In regard however, to matters which are of an impermanent character, the point at issue certainly becomes established, so says the Same Author. "Even when witnesses depose to a portion only of the matter to be established in charges of adultery, heinous offence, theft, the whole of the matter that is alleged may be held to be proved." As for what has been observed by the Same Author "Where, however, the testimony of witnesses happens to be less or more, in such a case it should be omitted, there the witness shall not be punished, but if a witness does not depose he incurs a penalty". that has a reference to matters of a permanent character.

Thus if the depositions of witnesses are inconsistent in regard to a portion set out in the dispute, then that also is useless, so says the Same Author. Where the testimony of a witness is inconsistent with the region, the period, the amount, its quantity, form, kind, and the age, such depositions, the learned regard as not given."

1 Ch. I. 232

2 Ch. I. 234

3 द्वितीयवर्षादि Compare 'Long Causes' of the modern nomenclature

Nārada <sup>1</sup> also. "If the witness evidence differs mutually as to place, time, age, matter, quantity, share, and species, such testimony is worthless likewise"

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Thus it should be construed, that in matters of a permanent character, such as the recovery of debts etc., the witness testimony which is neither less nor more, and is in support of the point at issue, is good evidence, and not any other. Hence also Vyāsa "If what is deposed to is not proportionately less as regards time, form, age, amount, and the species, then the point at issue may be regarded as established" Brhaspati <sup>2</sup> also "Where the point under affirmation has been entirely corroborated by witnesses, that party shall be declared to be successful, but if otherwise, the point at issue would not be regarded as concluded" 'Corroborated' i. e. as correct

To that effect also Yājñavalkya <sup>3</sup> "The party whose witnesses depose to the truth and (the allegations in) the plaint, shall become successful, (and) the one whose witnesses speak falsehood, sure will be his defeat" The meaning is that the disputant i. e. either the plaintiff or the defendant, all of whose witnesses depose truly in support of the matter affirmed by him

The one, however, some of whose witnesses depose truly, and the others falsely, for such a one states Manu <sup>4</sup> "On a conflict among the witnesses, the King shall accept (as good) the evidence of the majority, if the witnesses are equal in number, that of those who are distinguished by good qualities in case of a difference as to qualities the best among the twice born Nārada <sup>5</sup> also "Where there is a conflict among the witnesses, the statements of the majority are decisive, when the number is equal, those who are pure should be accepted and if the number of these be equal, the evidence of those who have stronger memory. Where, however, an equal number of witnesses possessed of a good memory is found on both sides to a dispute, in such a case on account of the settled nature of the law of evidence the entire testimony should be turned down" The use of the word 'pure' is indicative, by implication, of those who are possessed of the qualities of a householder's order, and the like. Hence also Yājñavalkya <sup>6</sup> "In the case of a

1 Ch I 233

4 Ch VIII 73

2 Ch VII 3

5 Ch I 229-231

3 Book II 73

6 Book II 78



disagreement, the testimony of the majority prevails, similarly, if the witnesses are equally divided, the evidence of the virtuous, if, however, the virtuous disagree, the evidence of those who are most virtuous should be accepted" In this connection Brhaspati "When there is a doubt as regards a document or the testimony of witnesses, and an inference is also of a doubtful conclusion, in such a case, the ordeal is the determinant"

Thus in the Smṛtichandrikā texts on the testimony of witnesses

#### Now some Other texts relating to witnesses

- There Yājñavalkya <sup>1</sup> 'One who does not (offer to) give evidence as a witness though positively knowing (the facts of the case), that basest of human beings is equal to a false witness in point of sins and (liability to) punishment' The meaning is, that the man who though having knowledge in fact of the point in dispute, (yet) through wickedness, does not agree to give evidence such a one is to be regarded as sinful equally with a false witness and punishable too Nārada <sup>2</sup> also "After having previously communicated to others, one who refuses to give evidence, such a one deserves to be heavily punished, for indeed he is more criminal than a false witness even" The meaning is that, one who when first having agreed to be a witness, afterwards when cited says at the time fixed for the appearance of the witnesses, that he would not be a witness, such a one should be heavily punished Brhaspati <sup>3</sup> also 'If a witness who, when summoned not being ill does not make his appearance, such a one should be made to pay the debt and a fine after the lapse of three fortnights' Vasishtha also 'A person who was never cited as a witness, not summoned, nor asked, or one who declares a fact to be untrue, such basest of mankind should be punished' Kātyāyana also 'If deposing everything even when not asked or not replying to what they are asked, the witnesses should be placed under arrest censured and punished according to law In the case of abuse, and in the case of deceit, they should be made to pay three hundred as the penalty, in disputes regarding debts etc they should be punished with the amount, as well as be made to pay the debt' 'Amount' i.e. the amount of the penalty By the use of the pronoun 'these' are contemplated only those who do not give a reply to a question as these are immediately in the context Hence also the Same Author says "If a person who has witnessed a transaction,

does not give evidence as a witness, he shall bear an equal amount of penalty and (also) the amount of the debt in disputes other than these he deserves the penalty of three hundred'

'Other than these' : i.e. other than those relating to debts etc. 'to that effect Manu' 1 'If a man who without being ill does not give evidence in cases of loans and the like within three fortnights, he shall become responsible for the entire debt and pay a tenth part of the whole (as a fine) 'Without being ill' : i.e. is well 'that debt' : i.e. the subject matter of the dispute which was to be proved by the witness 'The whole of it' : i.e. together with interest 'Shall pay' : i.e. will be compelled to pay Moreover Yājñavalkya 2 also A person however, not giving evidence should be made to pay before the king the entire debt with the addition of a tenth part as a charge thereto on the forty sixth day'' By the expression 'addition of tenth' is expressed a 10th portion Such an amount, moreover, should be recovered by the king as a penalty, it has been so explained by the commentator 5 10 15

Here the import of the former text being that nothing should be paid by the debtor and that that amount itself which is to be paid a witness not giving evidence should be compelled to pay it follows as of course that the amount paid by a witness himself not giving evidence should not be recovered from the debtor, as it had to be paid by him owing to his own fault From the expression on the 16th day it appears that if he speaks before that period he should not be compelled to pay 20

Hence also Katyāyana 'When witnesses are not properly in possession of facts time should be given to them where the witness evidence is ambiguous they should be asked immediately to speak plainly Thus, therefore, what has been stated by the Same writer viz 'No time should be allowed by the king to be lost in making the witnesses depose A serious defect might arise on account of time in the form of miscarriage of justice,' that should be understood to have a reference to a witness whose testimony is clear as the rule as to giving of time is in regard to ambiguous evidence 25 30

A witness moreover, who after being asked sworn in, and after the question was put to him at the time of the trial being infatuated, or blinded by the influence of passion or hatred denies to give his own evidence by saying that he would not be a witness for such a one Yājñavalkya 3 states 35

1 Ch VIII 107

2 Book II 76

3 Book II 82

a penalty : "He who having been called upon, sworn in to give evidence, conceals it from others under the influence of passion, such a one should be made to pay an eight-fold fine, a Brâhmana, however, should be banished" The context here is (of that) 'in the dispute Therefore the sense to be inferred is that eight times the amount which would be the penalty upon a defeat in the dispute should be compelled to be paid by him The meaning of the expression 'should be banished' is that, depriving<sup>1</sup> him of everything, pulling down his house, or exterminating him from his own nation Here however, by its association with the enhanced penalty, the meaning to be inferred is in the form of a banishment from his own country

Katyâyana, however, says that witnesses who having once given evidence, again give false evidence should be punished "Witnesses who having first given evidence depose afterwards contrary to that, should be fined, since they are guilty of giving false evidence" Gautama<sup>2</sup>, however, says that a witness giving false evidence for the first time even, should be censured and punished also "A witness must be reprimanded and punished for speaking an untruth" Yâjñavalkya<sup>3</sup>, however, states a special penalty for these kinds of witnesses "Separately each should be punished, the suborner as well as the false witnesses, with a fine double the amount in dispute A Brâhmana, it has been laid down, should be banished" Those who prepare false evidence are suborners &c in short who give false evidence These should each be separately punished by the king The meaning is that they should be made to pay twice the amount which is incurred upon a defeat in the dispute

Although it is generally stated that a Brâhmana should be banished still where double the amount of penalty is given in the case of Kshatriyas in small amounts, there the punishment for the Brâhmana would be in the form of the banishment depriving him of everything Where, however the punishment to the Kshatriyas is not in small amounts, there the punishment for the Brâhmana would be in the form of his house being demolished, where again the amount in the case of

PAGE 93\* Kshatriyas is too large, there it should be understood that the punishment for the Brâhmana would be in the form of his being exiled from his country. Because the rule is that the imposition of penalty depends relatively upon the comparative magnitude of the offence

Therefore also a variety of punishments has been laid down by Manu<sup>4</sup> by a discriminating regard for the offences involving an element

1 नदीकरण

2 Ch. XIII 23

3 Book II 81

4 Ch. VIII. 118-122

of untruth "Evidence which has been given from covetousness, infatuity, fear, friendship lust, anger, and likewise from ignorance, or childishness, is declared to be invalid. Of these any one who gives false evidence out of any of these emotions, for such a one, I will declare punishments in due order. If out of covetousness they shall be fined one thousand, if out of infatuation, in the lowest amercement, while if through fear, the four muddling amercements shall be paid as fine, and if through friendship, five times the amount of the first, i. e. the lowest amercement. If through lust, ten times the lowest (amercement), if through anger, three times the next (i. e. the middle), if through ignorance, full two hundred, if through childishness one hundred. These the wise men have declared to be the punishments for giving false evidence. 'Covetousness' : i. e. solely devoted to money, 'infatuation' : i. e. want of proper appreciation of the sense of the question, fear' : i. e. apprehension of an evil likely to accrue, 'friendship' : i. e. excessive attachment, lust' : i. e. desire for amorous enjoyment, 'anger' : i. e. intolerance, ignorance : i. e. a wrong conception even at the very time of the actual sight or bearing, 'childishness' : i. e. non-acquisition of steadiness of intellect.

Here in the case of false evidence given through covetousness, fear, friendship, the highest amercement has been declared by a variation in language by regard to parity of offence, while a falsehood deliberately made involves greater criminal liability and therefore one and a half times of the highest amercement has been stated while when on account of anger, the criminal responsibility being still higher, three times the highest amercement has been stated. In the case of infatuation, however, the criminality being smaller, the lowest amercement has been declared, while in the case of ignorance the criminal liability being still less, a couple of hundred *kārshāpanas* have been stated. In the case of childishness, moreover, it should be borne in mind that the criminality being still less than the lowest, half of it has been stated. Moreover, this rule of variation in punishments should be understood to be applicable even in the case of a Brahmana perjurer as the rule as stated in the *Smṛti* <sup>1</sup>: 'These are declared to be in the case of false evidence has been stated without any particularisation.

Members of the three *varnas* however, who give false evidence, a *just* king should entirely banish after inflicting punishment, while a Brahmana

"No one should converse in secret with a witness summoned by his adversary, neither should he try to estrange the latter from the cause of his opponent by other means. The party to such a practice as this is regarded as *Heena*."

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The import is that the king should punish with the penalty of a *Heena* litigant, one who conducts himself in such a manner

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In this manner having inflicted a penalty upon a false witness and one citing him, the decision which was reached by reliance upon the evidence of the false witness should be cancelled. To that effect *Mama* also. In whichever dispute false evidence has been given, one should reverse the decision in all those cases, and whatever may have been done should be undone.

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In which cause will it be regarded that false evidence has been given? Anticipating this question says *Yajñavalkya* 2 "Even after evidence has been given by witnesses in the matter under consideration if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false. The meaning of this where many witnesses, some near and others not near, have been cited there, taking into consideration the difficulty of bringing in the witnesses who are not near, and having decided that the evidence of the witnesses nearby was enough, a decision has been given with (a reliance upon) their evidence, such a disputant is regarded as defeated, and thinking that that defeat was connected with false evidence, the plaintiff again arranges to bring the witnesses who were not near, but who were of better quality than those who are near or twice the number of witnesses who were near (but) are declared false.

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*Katyāyana* also. Where however, a matter in dispute has been established by means of witnesses and the other party proves that matter to be otherwise by means of a greater number of witnesses or witnesses of good family, then the first set of witnesses become false. The meaning of this. When the witnesses cited by the plaintiff who have deposed in support of the case of the plaintiff, then if the defendant causes evidence to be given by witnesses who are superior in number or in quality, then the plaintiff's witnesses shall be regarded as false.

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AN OBJECTION. Indeed, how can in one suit be the possibility of witnesses for the plaintiff and the defendant, as there is a prohibition under the text 3 never

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1 Ch VIII 117

2 Book II 80

3 Cf *Katyāyana* see Coll Vol II p 664 line 16

he should simply banish " In this text for false evidence by a Brahmana a special rule having been laid down, what is the particular point (intended to be) stated here? It will not be proper to say that in the case of Kshatriyas and others, banishment after inflicting punishment, while in the case of a Brahmana banishment only. Because the punishment of banishment having been laid down by Yājñavalkya for a Brahmana even for one act of false evidence there is no occasion for an enhanced punishment upon a repetition. Therefore what has been said by some namely that the word 'tu' 'however', is intended to exclude a monetary penalty in the case of a Brahmana, stands refuted.

It may be asked, how then (can it be stated that) that a special punishment has been stated in the case of a Brahmana? The answer is, here by the expression 'entire banishment', are expressed the punishments of cutting off of the tooth gums, cutting off the tongue, and death also, while by the word 'banishment' the deprivation of entire property' and the like. Therefore, a particular rule has come to be stated in the context of the expression 'having inflicted a punishment,' while the distinction between absolute banishment and simple banishment and the like, as also the cutting off of the tooth gums the deprivation of the entire property, and the like should be contextualized by regard to the subject matter of the perjury, and also by regard to the repetition of the offence. In the case of a perjury committed without any special motive and committed also for the first time, the punishment should be as laid down by Yājñavalkya, in other cases that laid down by Manu. It should be so construed.

As to what has been stated by Viṣṇu viz, "persons giving false evidence should be deprived of their entire property," that has been interpreted by some as having a reference to a falsehood regarding land or referring to low castes such as the Sūdra and the like.

The use of the expression 'a false witness' is intended as indicative of such a one even. Hence also Katyayana. The party by whom false witnesses have been set up out of covetousness for (the fruit of) the litigation the king should confiscate all the property of such a one and should banish him from the place. 'Banish from the place' i.e. completely banish from his own country.

The party, moreover who has attempted to seduce cited witnesses for a false testimony, such a one is regarded as Heena, so says Narada.

"No one should converse in secret with a witness summoned by his adversary, neither should he try to estrange the latter

PAGE 94\* from the cause of his opponent by other means. The party to such a practice as this is regarded as *Heena* 5

The import is that the king should punish with the penalty of a *Heena* litigant, one who conducts himself in such a manner

In this manner having inflicted a penalty upon a false witness and one citing him, the decision which was reached by reliance upon the evidence of the false witness should be cancelled. To that effect *Mann*<sup>1</sup> also: 'In which-ever dispute false evidence has been given, one should reverse the decision in all those cases, and whatever may have been done should be undone' 10

In which cause will it be regarded that false evidence has been given? Anticipating this question says *Yajñavalkya*<sup>2</sup>: "Even after evidence has been given by witnesses in the matter under consideration if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false. The meaning of this where many witnesses, some near and others not near, have been cited there, taking into consideration the difficulty of bringing in the witnesses who are not near, and having decided that the evidence of the witnesses nearby was enough, a decision has been given with (a reliance upon) their evidence, such a disputant is regarded as defeated, and thinking that that defeat was connected with false evidence the plaintiff again arranges to bring the witnesses who were not near, but who were of better quality than those who are near or twice the number of witnesses who were near (but) are declared false" 15

*Katyāyana* also: Where however a matter in dispute has been established by means of witnesses and the other party proves that matter to be otherwise by means of a greater number of witnesses or witnesses of good family, then the first set of witnesses become false. The meaning of this: When the witnesses cited by the plaintiff who have deposed in support of the case of the plaintiff, then if the defendant causes evidence to be given by witnesses who are superior in number or in quality, then the plaintiff's witnesses shall be (regarded as) false. 20

AN OBJECTION: Indeed how can in one suit be the possibility of witnesses for the plaintiff and the defendant, as there is a prohibition under the text<sup>3</sup> 'never' 25

1 Ob VIII 117

2 Book II 80

3 Cf *Katyāyana* see Coll Vol II p 664 line 16

in one suit shall the burden of proof lie on two litigants". (The answer is) 'yes,' and it is therefore that the text "Where however has been established" has been made to have a reference to a re bearing. Therefore there is no contradiction anywhere.

- 9 In regard to a single witness says Maṇu<sup>1</sup> "In regard to the evidence of a witness, however, the witness to whom within seven days after he has given evidence, happens a (misfortune) through sickness, fear, or the death of relative, such a one shall be made to pay the debt and the fine." The meaning is that the test of the evidence of one witness should  
10 be made by the occurrence of difficulties from unseen causes within a week.

- This test, moreover, should be made only in the case of witnesses such as a messenger, and the like, and not, moreover of one possessed of qualities, or of the king, or the Presiding Officer of the Court, for there is an impossibility in such cases of an untruth even in  
15 the case of one. Hence also Vyāsa "Under the influence of a jewel, or a charm, or of medication, or when administered without proper attention, even an ordeal may not respond well; but never a witness who is endowed with good qualities." Hence also an exception has been made by Brhaspati<sup>2</sup> in the case of a messenger and  
20 the like witnesses, as also in the case of the King and the chief judge "A messenger witness one who bears the time indicator, as also one who has arrived in the middle of the transaction, shall make good evidence even though one, so also the king and the chief judge likewise." "One who bears the time indicator" is the accountant. Others have been indicated  
25 by Katyāyana "If a person who was taken in confidence at the time when the deposit was made, as also a messenger witness when sent by a litigant, may be admitted as a good witness even though one."

Thus in the *Smṛticāudrikā*—Texts relating to Witnesses

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Now cases of Inference without witness—*Asāksa pratyaya*

There Narada<sup>3</sup> "However six different kinds of proceedings have been indicated in which witnesses are not required. In the case of these, the only indications (of the crime committed) are substituted for the evidence of witnesses in these cases by the learned." The meaning is that, in the case of disputes such as for incendiarism or the like, the sign of a burning faggot in the hand performs the function of witnesses.



To that effect says the Same Author<sup>1</sup>. 'One carrying a burning faggot in his hand may be known to be an incendiary, also one apprehended with a weapon in his hand (may be known) to be a murderer, and in the case of a man (and a woman) apprehended together while seizing one another by the hair, the man may be taken to be an adulterer with the wife of another 5 One having a hatchet in his hand and moving about in the vicinity may be a destroyer of embankments Likewise one having an axe in his hand is declared a forest cutter From the signs which are apparent, a man may be known to have committed an assault. All these are the cases where a conclusion may be drawn without the evidence of witnesses, but in the 10 case of violence a careful investigation is advisable' 'From the signs which are apparent', such as fresh nail marks and the like 'Conclusion without the (evidence of) witnesses : *i e* even without the help of witnesses, by mere signs only doubts may be dispelled 'In the case of violence', : *i e* in the case of assault 15

For the purpose of discriminating marks artificially caused a careful investigation should be made, for the Same Author<sup>2</sup> says 'Some one might make marks upon his person through hatred and cause injury to another In such cases it is necessary to resort to inductive reasoning, (ascertaining) the motive and the fact of the matter 20 and their inter relations' 'In such cases' : *i e* in the case of an assault

Indeed it may be stated that this text<sup>3</sup> is meaningless 'The firmament has the appearance of a flat surface and the AN OBJECTION fire fly looks like fire Yet there is no surface in the sky, nor fire in the fire fly Therefore, even though 25 a thing should have happened before one's own eyes it is proper to investigate the matter One who does not deliver his opinion till he has investigated the matter will not swerve from justice' For in the above text the Same Author<sup>3</sup> has laid down the rule of investigation in all cases (even) where one has a burning faggot in his hand The answer is 'yes', 30 that is so, but even there an investigation is prescribed for laying down the rule about the remedy Thus there is no fault

In the same manner a dispute about a theft also may in some cases be regarded as capable of conclusion without evidence of witnesses To that

1 Ch I 173-175 There is an omission of one verse entirely in the print Here read the following verse between line 7 and 8th line

प्रत्यक्षि हो विरोधो दण्डपादमहत्तर असंशयि यथा इने पादमे द्द वीक्ष्यम् ॥

2 Ch. I, 176

3 Nārada, Intr I 72-73

effect Śankha and Likhita "From the mutual sport in the form of catchholding in a each other's hair the offence of adultery with another's wife, one with a burning faggot in his hand an incendiary, one having a weapon in his hand, a murderer, and one with the stolen property in his hand, a thief (may be known) 'Stolen property : e the mark of a portion of stolen property Even here an investigation should be made, as Narada<sup>1</sup> has stated 'One who has never committed robbery may be charged as a robber, and an actual robber on the other hand may be acquitted of the charge of robbery, (for) though not a thief Mānava was declared to be a thief at law Therefore the import is that investigation is necessary Hence also Brhaspati "Where in the case of a document, or after examination of witnesses a doubt is created and an inference is confused, in such a case divine evidence is the purgative" Inference : e inferential reasoning e.g. from the burning faggot in the hand and the like As Vyāsa has stated that 'the wise regard inference as based on motive and logical reasoning

Thus ends the topic of Inference without witnesses

Thus ends the Chapter of Witnesses

Now the Consideration about Ordeals-Divya Nirūpanam

Tbere Pitāmaha "In whichever dispute, however, where there is no possibility of witnesses (being available) and in (the case of) heinous offences particularly the judge should cause ordeals to be administered' The use of the word 'witnesses is by an extended application indicative of human evidence Hence also Yajñavalkya<sup>2</sup> 'Evidence has been declared to consist of documents, possession, and witnesses, if none of these be available any one of the ordeals has been declared' The expression, 'if none of these be available, is intended to include, by implication, the absence of argument (Iukti) also Hence also Narada<sup>3</sup> "If arguments also are of no avail then one should decide by (a resort to) ordeals only, such as by (the ordeal of) fire, water meritorious acts and the like by a regard to the matter in issue, the season and the capacity (of the persons)'

'By a regard to the matter in issue : e the meaning is that appropriate to the smallness or greatness of the point to be established To that effect also Vyāsa "Appropriate to the matter in issue have been stated to

be the (ordeals of) truth, balance etc" There, the (ordeals of) truth etc are in proportion to the smallness of the matter in issue, so says Brhaspati<sup>1</sup> "Truth vehicle, weapons, cow, seed and gold also the feet of the Gods or of the Brāhmanas, as also the heads of the sons and the wife, these, however, have been declared to be the (subject of) oaths easy to be taken in small matters." 5

'In small matters', this is intended as indicative of establishing a small injury also. Hence also has been generally stated by Nārada<sup>2</sup> "Truth, vehicle weapons, cow, seed, and gold also, the venerable feet of the gods and ancestors charitable donations, and meritorious deeds also (by) these have been declared to be the oaths in small matters' 'In small matters' i.e. in trifling offences 'And meritorious deeds also' in this expression, by the word also, *cha*, other oaths also, well known to the people are incorporated. Hence also Sankha and Likhita "(By) the charitable endowments known as *Ita*<sup>3</sup> and *Purta* and other (kinds of) oaths also should be caused (to be taken)" 10 15

As to what has been stated by Nārada "In a great cause, an ordeal has been stated to be for men engaged in the dispute" as also what has been stated by Pitāmaha "In (the case of) a serious offence the Lord of the Earth should compel ordeals to be administered", that has a reference to the balance and similar ordeals as says Yājñavalkya<sup>4</sup> "The balance, the fire, the water, the poison, and the kosa are the ordeals (prescribed) here for exoneration (from an accusation) these are (to be resorted to) in charges of serious offences, when a plaintiff has (agreed) to abide by the result (of the ordeal)" By the word 'fire', are indicated, a heated iron ball a heated corn, as also a heated (plough head), as it has been generally stated 20 25

Therefore in the case of a heated corn or plough head in case of an accusation of a serious offence the condition should be understood to be 'when the plaintiff has (agreed) to abide by the result' '*Sirhalam*, result' i.e. the penalty attached as a consequence to a defeat in a dispute. It is the head or first position in the trial, as it occupies that position it is (called) *Sirhalastha*, 'placed at the head. This is what is (intended to be) stated. Not that in all kinds of accusations of serious offences, occur 30

1 Ch X 6

2 Ch I 248

3 दण्डार्थ—See Manus Ch IV 226 These are also cited as under

मार्तृकपरागादिविवाहवन्धनि च । अस्त्रमश्वनिपाका दूर्तपथका प्रथमम् ॥

दण्डार्थिकमद्वयं विवाहादिषु दृश्यते । अनर्थकं च दण्डमिति ननु भवति ॥

4 Book II 95

the ordeals of balance or the like; but that in those cases only where, with the object of substantiating the solidity of his charge, the prosecutor of his own accord undertakes to pay the penalty either bodily or pecuniarily for a defeated party in cases of serious accusations, by saying "In case this  
 5 man succeeds, I (agree to) be punished in such a manner." Hence also says Nārada<sup>1</sup>: "Where no one declares himself ready to undergo punishment, an ordeal cannot take place" i. e. the implication is that when the prosecutor does not 'offer to abide by the result'. So also Pitāmaha: "In the case of ordeals, the prosecutor is expected to declare to abide by the result;  
 10 and (then) to the accused should be administered the ordeal as pointed out in the *S'ruti*". 'Ordeal', i. e. any of the five, viz., the balance and the others, as has been particularised by Yājñavalkya in the word 'these'. Hence also Nārada: "A King always administering the five ordeals, according to the procedure under the law, to the accused persons, enjoys  
 15 happiness here and after death from here."

By this it comes to be stated of course that these ordeals are not for the prosecutors. And it has also been stated by Kātyāyana: "No one should appoint a prosecutor for an ordeal; to the accused should be administered an ordeal by those who are adepts in (the matter of)  
 20 Ordeals." 'No one,' such as the head of the court or the like. 'Adepts in ordeals,' such as the Chief Judge and the like others.

By this it necessarily comes to be stated that this rule has no application where an ordeal has been undertaken by the mutual agreement between the plaintiff and the defendant. And it has also been stated by  
 25 Yājñavalkya<sup>2</sup>: "Or, by consent, any one may perform (the ordeal) and the other may make a declaration<sup>3</sup> for a liability in case the verdict went against him." By Nārada also has been stated: "The prosecutor has always been expected to declare himself ready to abide by the result; by consent, however, the other may do so; the other may take upon  
 30 himself the result." 'Always' i. e. in regard to the five ordeals which require an undertaking to abide by the result.

PAGE 97\*

1 Ch I, 207.

2 Book II 96

3 शिर्षक्य or शिरक्य—This is the position of the prosecutor in a proceeding, particularly where an ordeal is resorted to, where he has to undertake the primary liability of a defeated litigant in case the result of the proceeding went against him

शिर्षक्य means a judgment, a verdict in a judgment; and शिरक्य one who declares himself liable for a verdict.

The undertaking by the accused to abide by the result is with a view to establish the strength of his denial, hence also, an undertaking by one who denies the charge viz 'If he succeeds, I should be punished in this manner'

Likewise in some cases, no one need give an undertaking (to abide by the result) as says the Same Author<sup>1</sup>. When the prosecutor has appeared and declared himself ready to abide by the result in case he was defeated, it is proper to administer an ordeal, otherwise (however) when (it is done) under the King's edict "Under the King's edict" for under the King's command, however, the (ordeals of) balance etc. may occur even without any declaration of liability. To that effect, The Same Author<sup>2</sup> "The King may inflict ordeals on his own servants, even without any declaration of readiness to suffer a penalty" Yājñavalkya<sup>3</sup>, however, in cases of particular offences, states an exception even to the rule about the declaration of readiness to suffer penalty "Even without a declaration of readiness to abide by the result and suffer penalty, (an ordeal may be permitted) in the case of treason against the king, and also of a sin (of an aggravated character)" 'Declaration': i.e. 'to abide by the result of the trial' To that effect Visnu<sup>4</sup> "In cases of high treason, and heinous offences, even without the declaration of readiness to suffer penalty" i.e. the implication is that the balance and like others may be administered. To that effect also Katyāyana<sup>5</sup> "For those who have been suspected by the Kings, the (ordeals of) balance and the like may be administered, for the purpose of the purification of self in such a case one should not require a declaration of readiness to suffer the penalty. In the case of those who have been suspected as guilty by reason of scandalous reports among the people as also those who have been suspected along with robbers the (ordeals of) balance and the like others should be administered in such cases there is no (necessity for a) declaration etc. so indeed is (the opinion of) Bhṛgu". The meaning is that those who are suspected of association with robbers

As for what has been stated by the Same Author. In trials based on suspicion, never should on any account a declaration (as to readiness to suffer the penalty) be required in (an ordeal of) *hoṣa*,<sup>6</sup> that is intended as a rule that in trials based on suspicion the *hoṣa* is administered in regard to debts even, without a declaration of readiness for a penalty, since the expression used is 'never on any account'

1 Ch I 269 As Asahaya puts it अथ न उपार्हसनात् यदा पुन नृपपदं कर्मादिस्ता कृता मयति नरा शिरास्थानं विनापि विन्य हानमथ Dr Jolly's edition reads नृपरासनात् instead of नृपार्हसनात्

2 Ch I 270

3 Book II 96

4 Dh S Ch IX 2

In charges based on suspicion, moreover, Kosa has been mentioned by Vyâsa "Balance fire, poison and water are the four varieties of proof, this division is in the case of divine (proof), Kosa is the fifth in cases based on suspicion."

- 5 The expression 'In case of suspicion,' is intended as an exhibition of confidence etc Hence also Kât'yâvana In cases of securing confidence when there is suspicion, at a partition among persons entitled to a heritage at all times and when an undertaking is contemplated under a combined action should offer the (ordeal of) Kosa alone'
- 10 Pitamaha also "In cases of confidence in all cases of suspicion, as also in a case of joint undertaking, in these cases the Kosa should be offered always for the purification of the mind" 'Kosa' : e 'without the declaration,' is the implication So also the Same Author "One should entirely avoid the ordeals which are without (an accompaniment of) the declaration
- 15 of liability, viz those commencing with the balance and ending with the poison, Kosa is the only one stated to be without a declaration' : e the implication is that in accusations founded on suspicion

- In a trial founded on fact and in regard to a serious accusation
- 20 the Kosa also being devoid of the declaration of liability is to the result is certainly to be avoided as in the text "When the prosecutor has (agreed) to abide by the result (of the ordeal) 'Yajñavalkya has stated the role as applicable to the five ordeals by implication In regard to trials founded on fact, and about
- 25 serious charges also in a court other than that of the king or the Chief Judge, however, in the five ordeals of balance and the rest there is no declaration by the prosecutor as to the result, because in the text 'An oral reproof, as also a reproof with the expression 'fie' are both confined to a Brâhmana, and a monetary and corporal punishment both these are confined to the king' the penalty as the consequence of the prosecutor's preliminary undertaking for the final verdict has been stated to be in regard only to the King's or the Chief Judge's Court From this therefore, the text "One should exclude entirely the ordeals (in trials) where there is no primary declaration by the prosecutor about the acceptance of responsibility for the final verdict' and any other like text should be understood only to be having a reference to the King's or the Chief Judge's Court

In this manner, moreover, what has been stated by Pitāmaha in refutation of the text in an answer of denial the (burden of) proof is on the plaintiff viz "for one who has been charged, an ordeal should be administered as has been pointed out in the *S'ruti*, that also should be understood to be in reference to the King's and the Chief Judge's Court only and not in courts other than these Hence also, it is proper to understand that the statement that the administration of the ordeals by the members of the Court should be without transgressing the rule 'In an answer of denial the (burden of) proof shall be on the plaintiff' would be in (the case of) a document or the like

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Nor, moreover, a doubt should be raised that under the text of Pitāmaha viz "One should not administer these (The rice and also the Kosa) in ( the case of ) charges (founded) on suspicion that by reason of its being (stated) along with the rice, the Kosa should be administered in charges founded on suspicion only, as there would be contradiction to the afore stated text of Yājñavalkya viz "When the plaintiff has (agreed) to abide by the result (of the ordeal)" Its statement along with the rice however is intended to indicate that in petty charges also the Kosa may be given Hence also Nārada "The Kosa, one may administer in small (charges) even ' Therefore it should be construed that the rule stated by Yājñavalkya viz ' These are (to be resorted to) in trials for serious accusations' is applicable only to the ordeals commencing with the balance and ending with poison If the rule were applicable to Kosa also there would be contradiction with the aforestated text of Nārada Hence also the Sangraha-kāra "(Ordeals) commencing with the balance and ending with poison, one should administer in important cases "

As for what has been stated by him 'The three, moreover, commencing with Kosa, in petty cases in their order', that is intended for stating that the rule as to a petty cause is in regard to the offence of deprivation only, and not in the case of a denial also, for, the ordeals of Kosa, rice, and heated coin, having been stated in reference to the denial of a serious charge, the restrictive rule as to (its applicability) to small matters would be impossible In small matters also, in regard to charges founded on suspicion alone, (should be) the rice vide, the text of Pitāmaha "The rice, and the Kosa also one should administer in the case of charges founded on suspicion" The heated coin also in small matters only if founded on suspicion, as it has been stated by the Same Author "For

charges founded on suspicion of theft in a small matter, one should direct the heated coin"

The ploughshare also may on occasions be administered in a small matter, to that effect also **Bṛhaspati** "For a cow thief, (the ordeal of) the ploughshare should be administered by the members of the Court with effort. Thus it should be understood that the rule viz 'These are (to be resorted to) in trials on serious accusations when the prosecutor has (agreed) to abide by the result (of the ordeal)', has a reference to the ordeal of the iron ball, to be hereafter described, and has no reference to (the ordeals of) the heated coin, the ploughshare, and the fire

Hence also a separate mention of the ordeals by fire has been made by **Bṛhaspati**. The balance, the fire and the water also the poison, the Kosa also the fifth, the sixth has been stated to be the rice, the seventh the heated coin, the eighth is called the ploughshare the ninth shall be the fruit of religious merit, all these ordeals have been pointed out by the Self born". The ordeal of religious merit however, having been excluded from serious charges, should be understood to be (applicable) in small matters only.

As for what has been stated by **Pitāmaha** "Those men who have been (guilty of) killing and are begging for an expiation, and those who have been accused in doubtful cases should be tried by the ordeals of **Dharma** and **Adharma**", its meaning is this. For those who have been accused in petty charges in regard to killing, innocey and the sins, the ordeal is the one by religious merit.

Thus in the **Smṛtychandrīkā** the **Consideration of Ordeals**

Now certain texts are being written which will be useful for a knowledge of petty and serious charges. There **Mānava** "For the purpose of business transactions among people those technical names (of certain qualities) of copper, silver and gold which are generally used on this earth, I shall fully declare". The meaning is that with the object of removing any misapprehension about the meaning of the rules of the laws of punishment and ordeals the technical names of substances like copper etc as linked with the measures are being expounded. The author expounds the point enunciated "The very small mole which is seen when the sun shines through a lattice they declare (to be) the least of (all) quantities and (to be called) a *trasarenu* (a floating particle of dust) (132), know (that) eight *trasarenu*



(are equal) in bulk (to) a *likṣhī* (the egg of a louse); three of these to one grain of black mustard (*rājasarṣhapa*), and three of these to a white mustard (*gaurasarṣhapa*) (133); six grains of white mustard are one middle-sized barley-corn (*yava-madhyala*), and three barley-corns however, (make) one *krṣṇāla*; five *krṣṇālas* are one *māṣha*, and sixteen of these, one *Suvarṇa* (134). Four *Suvarṇas* are one *pala*, and ten *palas* one *dharana*; two *krṣṇālas* (of silver) weighed together, must be considered as one *māṣhaka* of silver (135). Sixteen of these make a silver *dharana* or *purāṇa*; but know that (to be) a *karṣha* of copper is a *kārṣhāpana* or *pana* (136). Know that ten *dharāṇas* of silver make one *Ṣaṭamāna*, four *suvarṇas* must be considered (equal) in weight to a *niṣhka* (137)<sup>1</sup>.

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The net meaning of these verses is described in inverse order. The words *niṣhka* and *Ṣaṭamāna* are in regard to one silver *pala*. Hence also in connection with the technical names of silver (coins) *Yājñavalkya*<sup>2</sup> has said: "By ten *Dharāṇas* make a *Ṣaṭamāna*, but one *pala* only; a *niṣhka* is (equal to) four *suvarṇas*." The words *pala*, *kārṣhāpana* are the nomenclatures of the copper coin *karṣha* which is (equal to) the fourth part of a *pala*. The words *purāṇa* and *dharana* are the names of a silver coin which is the tenth part of a *pala*. Of the fourteenth part of a *karṣha*, a silver coin, the technical name is *māṣha*, of ten *palas* the name is *dharana*; that, moreover, should be understood to be in reference to substances other than silver, as the silver *dharana* is of a small measure. The name *pala* should be understood to be (applicable) in reference to all substances, as there is no particularisation in any *Smṛti*. The word *suvarṇa*, however is expressive of a gold *Karṣha*, as *Amarasiṅha*<sup>3</sup> has particularised in (the text): "The words *suvarṇa* and *bṛta* are used for a gold *karṣha*". *Al-ḥa* i.e. for *karṣha*, as the Same Author<sup>4</sup> has said: "These sixteen *likṣhas* are equal to a *Karṣha*, not in the feminine gender". The sixteenth part of a *Karṣha* has the technical name of *māṣha*; that, moreover, is to be understood in regard to substances other than silver, as a silver *māṣha* is the fourth part of a *Karṣha*. The word *Kṛṣṇāla*, however, is expressive of the eighteenth part of a *Karṣha*, as it is the fifth part of a *māṣha*. In this manner the limit as to substance, should be deduced by oneself in regard to the meanings of the words *sarṣhapa*, *likṣhī*, *trāsarenu*. In the expression *yavamadhyā*,

1 *गुरा-फल* or *Gurāḥ-ḥerry*2 Ch VIII. 132-137—See *Yājñavalkya* Book I 362-365

3 Book I 365.

'middle-sized barley-corn,' the word *madhya* is used for the purpose of completing <sup>1</sup> the verse; so has been stated in the commentary on it.

In the case of a *trasarenu* the technical name of *padmaraja* also has been pointed out in *Purāṇa*: "When eight *paramāṇus* combine together known by the name of *trasarenu*, that is called *padmaraja* (lotus-dust)." The word *Mūṣha* is used for the twentieth part of a *Kārshāpana*; so says *Kātyāyana*: "*Mūṣha* should be known to be the twentieth part of a *Kārshāpana*, while *lālana* is the fourth part of a *mūṣha*, and also of a *pana*. In the land of the five rivers the nomenclature is in current practice".

The word *suvarna* is expressive of twelve *palas*, so says *Bṛhaspati*: "A sign of a *Karṣa* made on copper should be known a *Kārshikapana*; the same is called *chandikā*, while these four, a *dhānaka*; these twelve however, a *suvarna*, the same indeed is called *dināra*." *Kātyāyana* also: "A *kārshāpana* is to be known as *andikā*, these four however (make one) *dhānaka*; these twelve, however, a *suvarna*, known in the *Smṛtis* as *dināra* and *chitraka*".

In regard to *pala*, however, an alternative has been indicated by *Yājñavalkya* <sup>2</sup>: "Pala is four *satarnas*, or even five also, so it has been

1 शोणितम्

Put briefly and in Tabular form, the several measures stand as stated below:

### GOLD MEASURES

The dust particle visible in the sun's rays = *Trasarenu* ( त्रसरेणु ).

8 *Trasarenu* = 1 *Lālā* ( लाल )

3 *Lālās* = 1 Black mustard ( तामसं ) *Rājasaṅghaṇa*

1 Black mustards = 1 white mustard ( श्वेतं ) *Gaurasaṅghaṇa*

6 *Saṅghaṇas* = 1 *Yata* ( यत )

3 *Yatas* = 1 *Kṛṣṇaka* ( कृष्णक )

5 *Kṛṣṇakas* = 1 *Māṇaka* gold ( मणका )

4 *Satarnas* = 1 *Pala* ( पल ) also ( शिक ) *Nishka*.

10 *Palas* = 1 *Dharaṇa* ( धरण )

### SILVER MEASURES

2 *Kṛṣṇakas* = 1 *Māṇaka* ( मणक )

16 *Māṇakas* = *Dharaṇa* ( धरण ) or *Pāraṇa* ( पारण )

10 *Dharaṇa* = *Satamāṇa* ( सतमन ) or *Pala*

### COPPER MEASURES

11 *Pani* or *Kārshāpana* = *Pala* or  $\frac{1}{4}$  *Karṣha* ( पणि )

11 *Prastis* ( प्रस्ति ) = 2 *Palas*

declared" A silver *kīrāṭīpana* also exists, so says Nārada "In the southern part a silver *kīrāṭīpana* is in circulation." Vyāsa, however, states the measure of a gold *nāṭa* "Eight *palas* of *suvarṇa*, and four *nāṭas* this is the measure of a *nāṭa* declared by Vyāsa".

In this respect, in regard to the punishment for an ordeal, the *Mishas* and measures other than those stated by Manu should not be accepted when in contradiction with the usage of the country's transactions. The measure stated by Manu, such as the '*Mishas* etc' in regard to penalty for an ordeal must certainly be accepted even if in contradiction with the usage of the country's transactions. To that effect also Brhaspati "The enumeration (of measures) for which the dust in (the Sun's) rays are the basis, and which has been declared by Manu, ending with *kīrāṭīpana*—that should be used in regard to (the administration of) ordeals as well as of punishment". The use of the expression 'ending with *kīrāṭīpana*' is with the object of demonstrating that this rule is not applicable in regard to the *nāṭa* measure, and thus an ordeal which may be hereafter referred to by regard to another *nāṭa* will be uncontradictory.

Thus in the *Smṛticandrikā*, texts about Petty and Serious charges

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Now the adjustment of Ordeals according to the amount of money (involved)  
*Dhanaparimāṇalo Divyavyavasthā*

There Kātyāyana "Where there is a denial of a (completed) gift, there one should determine the measure of relief" Denial, i. e. evasion

How should one determine it? Anticipating this question, says the same Author "After ascertaining the extent of the entire amount, one should fix gold as the standard (of measure); and taking the gold standard as the measure, then should one administer the ordeal. After ascertaining the quantity in (terms of the) *suvarṇa*, in the case of a hundred, the (ordeal of) poison has been prescribed; while for a loss of eighty, one should administer the fire (ordeal), for a loss of sixty, the water (ordeal) should be administered, while for (a loss of) forty, the balance, for a loss of twenty and ten however, the drinking of the Kosa has been ordained, for a loss exceeding five, or of a half of that, the rice, while for a loss of a half of that, one should touch the head of the son or the like, and for a loss of half of that also, the ordinary modes of proof also have been stated."

- 1 In all the cases, the word 'loss' should be understood as indicating denial, as the passage has commenced with the 'suppression of a gift.' 'Loss of twenty and ten,' i. e. loss of thirty; or loss of twenty, or loss of ten; 'more than five,' is 'exceeding five' e. g. six and further on; 'of the half of the half of that,' i. e. one and half gold *prasrti*; upon a loss of that, rice; upon a loss of half of that, half a *suvarna prasrti* less by an eighth part, touching of the head of a son and wife; 'upon the loss of a half of that, however,' i. e. upon the loss of seven and half *kr̥ṣṇala prasrti*, ordinary oaths, eight times the amount, and the like. The word *cha*, 'also', is intended to indicate the inclusion of oaths stated in the Smrtis.

- Hence Viṣṇu<sup>1</sup>: "In all kinds of (claims relating to) property, the value (of the subject matter) should be estimated in gold; there, if (its value amounted to) less than one *kr̥ṣṇala*, a *Sūdra* should be made to swear by a blade of *Dāru* grass (by holding it in this hand); if it amounts to less than two *kr̥ṣṇalas*, by a blade of *Tila*; if it amounts to less than three *kr̥ṣṇalas*, by a blade of silver; if it amounts to less than four *kr̥ṣṇalas*, by a blade of gold; if it amounts to less than five *kr̥ṣṇalas*, by a lump of earth taken from a furrow; if the amount is twice as high (as in each of the last mentioned cases) a *Vaiśya* must (in each case) undergo that ordeal which has (just) been mentioned (for a *Sūdra*). A *Kṣatriya* must undergo the same ordeals if the amount is thrice as high. A *Brāhmaṇa* if it is four times as high." 'A lump of earth taken from a furrow' i. e. a handful lifted up by a plough. The use of the expression 'less than' is intended to exclude the rule of oath in regard to man

- In regard to an oath, however, Manu<sup>2</sup> states a special rule: "He (the judge) should cause a *Brāhmaṇa* to swear by his veracity (*satya*); a *Kṣatriya* by his vehicle, and by his weapons; a *Vaiśya*, by his kine, grain, and gold; and a *Sūdra* by (imprecating on his head the guilt of) all heinous sins (*pātalas*)." The meaning of this: 'If I am guilty of concealing the subject matter in issue, then my religious merit called truthfulness may become fruitless' thus he should cause a *Brāhmaṇa* taking an oath to declare; in that manner the *Kṣatriya* and the rest. In the place of 'my religious merit called truthfulness may become fruitless,' 'my conveyances and weapons, may become useless' in the case of *Kṣatriya*, 'my kine, grain, and gold may become useless' in the case of a *Vaiśya*, and 'may all sins come to me' in the case of a *Sūdra*. This is the differentiation.

The subject of touching the feet has been pointed out in another Smṛti.  
 "For a *nishka*, however, an oath of truthfulness, for two *nishkas* touching the feet, for less than three, however, a flower, and for higher than that, the drinking of the *Kosa*". By the word *nishka* (as used) here is indicated the fourth part of a golden *larsha* and stamped with the (royal) signet, there also in some regions the transaction is in *nishka*. 5

It may be said, indeed, by reason of the rule that 'the *māsha* etc' stated by Manu must be taken in the matter of ordeals, it is not

AN OBJECTION proper to set up a *nishka* used in ordinary transactions, (the answer is) no, not so, it has been stated that in regard to *nishka* the rule stated by Manu does not apply, moreover in such a case, the value of a *nishka* stated becomes more than one and half a golden *larsha*. There in regard to the rule of affirmation by veracity, there would be a contradiction with the text of Vishnu viz 'A Brīhmana, if it is four times as high', for four times five *larshas*, is a fourth part of a *karsha*. Therefore it should be understood that the adjustment about an affirmation by veracity etc. should be by the current *nishka* used in ordinary transactions. By deduction, the staking of the merit accrued from *Itha* and *Purva* acts, should be understood to be in regard to property which is more than the affirmation by castes, but less than the ordeal of religious merit. 10 15 20

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Brhaspati<sup>1</sup> states the subject of Dharma "When a hundred had been stated or falsely denied, the purgation by Dharma should be administered" The meaning is that the Ordeal of Dharma is administered at the lowest when the value is a hundred *larshapanas*, and further on at the middle most, for two hundred and higher, and the highest for four hundred and larger amounts, the Same Author<sup>2</sup> having stated that "These figures are applicable in the case of low persons, for persons of the middling kind, double is ordained, and for persons of the highest rank, four times as high" 25

The value of a *larshāpana* is the eightieth part of a *nishka* current in ordinary transactions. A *larshāna*, moreover, is the twentieth part of a current *nishka*, while a *śūdrāna* is a fourth<sup>3</sup> part of a current *nishka*. Thus, the adjustment of all the ordeals by regard to the current *nishka* should be understood to be as follows. Commencing with four hundred *nishkas* and onwards, the prison, three hundred and twenty *nishkas* and onwards, the fire, or two hundred and forty *nishkas* and onwards, the 30 35

1 Ch X 11

2 Ch X, 12

3 मनुस्मृति, another reading is अष्टमशतिका—4 अश्वलायन, thus the two readings have a variation of 1:16.

inferred from either the amount prescribed as a penalty, or the penance and their corresponding amounts

As to what has been stated by Yājñavalkya<sup>1</sup> "Never until (the limit of) one thousand (is reached) should the plough be administered, nor the (ordeal of) poison, or the balance (likewise)", that is for the prohibition of those who may fall under the middling category by regard to their conduct, as in the case of the middling group, there is no serious charge (*Mahābhaya*) for a denial or concealment of less than a thousand

Thus, moreover, in the case of the highest, there being a small charge for less than two thousand, the prohibition of the balance

PAGE 102 \* and the like may be inferred As to what, moreover, has been stated by Pītāmaha "For a thousand one should administer (the ordeal of) balance, and similarly for half of a thousand, the iron, but for a half of a half, the water, and for a half of it, however, the (ordeal of) poison has been declared," that has a reference to a person who had a previous conviction As says Vishnu<sup>2</sup> "To one formerly convicted of a crime even though the matter be ever so trifling, one of the ordeals must be caused to be performed" Thus therefore, the meaning of the text of Pītāmaha should be understood to be that, even in the case of the highest in the case of the one with a previous conviction for a thousand, fourfold in a small matter, the (ordeal of) balance comes to be used

In this manner, for (the offences of) treason against the king, and also in (serious) accusations of *Mahāputakas* and also even for a small matter, ordeals have to be administered, so says Yājñavalkya<sup>3</sup> 'And in cases of offences affecting the king, and in serious charges, the parties should always undergo an ordeal after having purified themselves'. Vishnu<sup>4</sup> also "Now follows the performance of a condition In cases of treason against the king, or of violence according to the desire (of the judge)" 'Performance of a condition, i.e. performance of an ordeal, such as the balance and the others Moreover, after the manum of the cow and the bull, *Brhaspati*<sup>5</sup> states the (ordeal of) balance etc only, here "These oaths, however, have been ordained, which are easy to perform and proper for trifling occasions, in cases of charges for heinous offences, they direct ordeals as the (means of) purgation In the same way also, it should be remembered that the oaths by veracity which have been stated, can never be (prescribed) in the case of violence or the like In the case of

1 Book II 92

3 Book II 99

4 Ch IX 1-2

2 Ch IX 18

5 Ch X 7

theft also, the adjustment will be explained in terms of the amount of *Nishkas* current in the transactions

- For (a man of) the highest class in cases of fifty *nishkas* or more, the (ordeal of) poison for thirty seven and half *nishkas* or more the (ordeal of) fire, for seven *krishṇalas* and thirty three *nishkas* also or more, the water, for twenty five *nishkas* or more the balance, for twenty *nishkas* and more, the heated *masha*, for fifteen *nishkas* and more, the rice, for seven and a half *nishkas*, the *loṣa*, for five *nishkas* and more, the ordeal of Dharma, for a four units of cows and more, the ploughshare
- For a man of the middle category, for (a case valued at) twenty five *nishkas* or more, the poison, for nineteen and a quarter *nishkas* and more, the fire, for sixteen *nishkas* thirteen *krishṇalas*, and a *yata*, the water, for twelve and a half *nishkas*, the balance, for ten *nishkas* and more the heated *masha*, for seven and a half *nishkas* or more the rice, for four and three-fourth *nishkas*, the *loṣa*, for two and a half *nishkas*, the ordeal of Dharma, for two units of cows or more, the ploughshare

- As for the man of the lowest class however, for twelve and a half *nishkas* and onwards, the poison, for nine <sup>1</sup> *nishkas* and seven and a half *krishṇalas* or more, the fire, for eight *nishkas* and seven *krishṇalas* less by a *yata*, the water, for six and a quarter *nishkas* or more, the balance, for five *nishkas*, the heated *masha*, for four *nishkas*, less by a quarter and more, the rice, for two *nishkas* less by half a quarter, the *loṣa*, for a *nishka* and a quarter, or more, the ordeal of Dharma, for one unit of a cow or more, the ploughshare

- For persons with previous convictions, even for a trifle in excess of the stated limit, the respective ordeals should be administered. In charges for treason against the King or heinous offences should be similarly administered. In regard however, to the oaths commencing with *vera* and ending with flowers, as no particular (rule of) adjustment has been seen here, the adjustment should be made in the same manner as in the case of concealment, as in the text of Vishnu <sup>2</sup> and of another Smṛti also a special mention has been made as in the case of concealment

Thus in the Smṛtichandrikā the adjustment of ordeals according to the magnitude of property

1 Both the editions viz the Collections (p 10<sup>o</sup> p 207) as also the Mysore Edition Part III p 238 l 1<sup>o</sup> read सर्वस्वहस्ता धनव्यतिरेकप्रमाणम् Apparently सर्व is a wrong reading as it does not fit in with the context. For the translation, therefore the word न्य is taken in the place of सर्व in the print.

Now the rule of adjustment of Ordeals according to the caste of the Disputants—Jatyādito -Divyavyavasthā

There, Brhaspati<sup>1</sup> : " In disputes regarding debts, or like other matters when there is a disagreement between the parties, (an ordeal) should be given in accordance with the amount (in dispute), and by regard to the party (concerned) likewise " ' By regard to the party ' : *i.e.* by regard to the caste of the two disputants

There Nārada states the (rule of) adjustment by regard to the caste :

" To a Brāhmana should be administered the

PACE 103\* (ordeal) of balance, for a Kshatriya, the fire, for 10  
a Vaisya should be administered the water (ordeal),

while for a Śūdra, poison only The *loṣa* has been proclaimed by the wise men as (the ordeal) in common for all "

Moreover, this is not a fixed rule, as says Kātyāyana " Or all Ordeals for all, (but) the poison (ordeal) is to be avoided in the case of the highest of the twice born " 10

By regard to the sex, want of capacity, and age also, Nārada states a rule of adjustment " To the impotent, the sick, persons devoid of prohiy, men oppressed on all sides by calamities, the minors, the aged, the women, and the blind also, one should always test these by the (ordeal of) balance " This, moreover, is a fixed rule, as the word ' always ' has been mentioned The use of the word ' balance ' is intended to exclude (the ordeals of) fire, water, and poison, but not of *loṣa* also, as says the Same Author " For women, however, never has the poison been stated, nor has the water been declared The real fact in their case should be, examined by means of the balance, *loṣa*, and the like " 20 25

By saying ' *hy* means of the balance and the *loṣa* ', the Author points out a prohibition of the fire also And it has been pointed out directly by him <sup>2</sup> " Women and children must not be subjected to the ordeal by water by persons experts in the Dharma Śāstra, as also the sick and those who are old or feeble Even if these happen to have come in, in connection with a heinous offence, one must not cause them to be immersed in water, nor must one cause them to carry fire, or to bring about their purification by (the ordeal of) poison " 30

As to what, moreover, has been stated by Pītamaha " For those who are in the midst of a vow, those with a lean body and for the minors, the aged, and those engaged in austerities, there shall be administered no 35



ordeal, if the law is to be followed," that has a reference to the (ordeals of) fire and water, for (if it be taken) to exclude even the balance, *lova* or the like, there would be a contradiction with the aforesaid text. Thus, therefore, it should be construed that for the impotent and the like,

5 the ordeals excepting those of fire, water, and poison, shall be administered.

Likewise, for the nonsmiths and like others also, not all the ordeals are permissible, so says *Kātyāyana* "Not to the ironsmiths, the (ordeal) of fire nor water to those who subsist on <sup>1</sup> water, so also to the experts in charms and *yoga*, not the (ordeal of) poison should one administer on any  
10 account, one must not prescribe the rice for a person with a scar <sup>2</sup> or a disease of the mouth" *Pitāmaha* also "In the case of lepers, one should avoid (the ordeal of) fire, water in the case of asthmatic persons, and for the bilious or persons of phlegmatic humour, one should always exclude the (ordeal of) poison, similarly also to the drunkards to women, and to  
15 vicious persons, and to rogues, likewise, the (ordeal of) *lova* must not be administered by wise men, as also to those who propound atheistic views.

*Nārada*<sup>3</sup> also "In the case of a heinous crime, irreligious or ungrateful men, eunuchs, low rascals, atheists, and convicted persons, one should entirely exclude the administration of *lova*." "In the case of a  
20 heinous crime," <sup>4</sup> and in the case of a person who has by habit been convicted of a heinous crime before. Thus moreover, it should be inferred that in the case of an impotent person, like the fire, *lova* also should be excluded.

As to what, moreover, has been stated by *Kātyāyana* "Those accused  
25 of murdering the father, the mother, a twice born, the guru an infant, a woman or the king those who are tainted with *Mahāpātālas* (great sins), and the atheists particularly those who carry the mark <sup>5</sup> of their faith, the confirmed rogues and those who are adepts in the practice of charms and *Yoga*, the issue of the mixture of the *tarvas*, those who are  
30 habitually inclined to sinful acts in regard to these who are accused of these censurable acts, never should a king with an attachment for Dharma administer an ordeal," that is intended as a prohibition of an ordeal to be

1 अमुसेविनम् : who earn their livelihood in water

2 वणिने This passage has various readings in the several digests and their editions. The Mysore edition of the *Smṛtychandra* reads (p. 240) वणिने for वणिने, the reading adopted in this series; the *Ānandāśrama* edition of *Aparārka* reads वणिने (p. 699) and M. M. Kane adopts the reading वणिने (Verse 424).

3 Ch. I. 392.

4 लिखित

performed by them directly but not for a trial by means of an ordeal, since immediately after this has been stated by the Same Author 'An Ordeal may be permitted to good men appointed by these very persons, where good men do not desire there he (i.e. the accused) may have his exoneration through his own men' 'An ordeal may be permitted' : c 5

PAGE 104\* the king may allow it to be administered To that effect the Same Author 'In these (kinds of) disputes those ordeals which have been prohibited (for them), the king should get these performed by their own<sup>1</sup> men with effort He should not give up the accused person, as says Manu Give up' : c 10 having him purged in the manner stated

As for what has been stated by him "In the case of the untouchable, the<sup>2</sup> slave of money, the *mlechhas*, and the offsprings of unions in the inverse order of the *Varnas*, the decision (as to an ordeal) does not, however, rest with king in the case of a doubt the ordeals well known 15 among these (classes) should one direct (to be administered)', that should be understood to have a reference where their own men appointed by them are not available

Thus the Rule of adjustment according to the disputants caste etc

Now the Adjustment of ordeals by regard to seasons *Rituo Divyavyavasthâ* 20

There *Pitamaha* The balance has been prescribed for all the seasons when the wind blows, one should give it up, the fire in the *Sisira* and *Hemanta* and during the rainy season has been declared, in the *Sarad* and the *Grishma* the water, and in the *Hemanta* and *Sisira* the poison' The use of the balance is intended to indicate the *kośa* also vide the text of *Narada* 25 'The ordeal of *kośa* however may be always administered, the balance is for all times The use of (the word) *kośa* is indicative of rice and the rest, so has been stated by the *commentators* Therefore, of the (ordeals of) fire, water, and poison alone is the adjustment by regard to seasons Hence also of these, even a prohibition in other seasons has been pointed out by the 30 Same Author 'The ordeal by water must not take place in the cold weather, nor in the hot season the purgation by fire, nor should one

1 स्वजने another reading is स्वजने —by good men

2 धनदासता —another reading is धनदासता slaves of the lowest class

3 A year is divided into six seasons or *Rtus* viz *Vasanta* *Grishma* *Varshâ*, *Sarad* *Hemanta* and *Sisira*, each *Rtu* covering two months, commencing with *Chaitra* and ending with *Phâlguna* consecutively

4 Ob I 259.

administer poison during the rainy season nor should the King administer the balance in stormy weather " *Vishnu*<sup>1</sup> also 'To the leper, to the infirm, or to the ironsmiths, the ( ordeal of ) fire must not be administered, nor in the Śirad or the Grishma also The ( ordeal of ) poison must not be administered to lepers to billions persons, or to the Brāhmaṇas The ( ordeal of ) water must not be administered to persons afflicted with phlegm or ( other ) illness, to the timid to the asthmatic nor to those who gain their subsistence from water ( e g fishermen etc ) Nor during the two seasons of Hemanta and Śisira, the ordeal of *loka* must be administered to atheists, nor when the country is afflicted with disease or death'

The use of the word Hemanta is intended to prohibit in the month of Pishya and not of the Mārgaśīrṣa also, as by reason of the absence of excessive cold during that ( season ) there would be an absence of prohibition against the water ordeal In this connection *Pitāmaha* "Chaitra and also Mārgaśīrṣa, the Vaisakha similarly also, these months are generally unobjectionable for the ordeals'

#### Thus the Adjustment of ordeals by the Seasons

#### Now the Places for the ordeals – *Divyadeśah*

There *Pitāmaha* "Facing the east, should the balance be constructed ( so as to be ) immovable, always at a pure place, at the place of Indra, or in the Court, or at the King's gate or at a cross road ' The place of Indra's is the abode of a wellknown deity, as *Nārada*<sup>2</sup> has stated "In the Court or before the gates of the King's palace, or in sight of an abode of the Gods, or a cross road Here *Katyayana* states a rule of adjustment "In the place of Indra, for men accused of *Mahāpātakas* ( heinous sins ), for those ( accused of ) attempting treason against the King should be fixed at the gate of the royal residence, for the issue of a marriage in the inverse order, the ordeal should be administered at a cross road, while for other matters the wise declare it to be in the Court room" By the use of the word 'Ordeal' generally, it should be understood that this rule is not confined to balance only, but that ( it is ) for others also, for which any particular place has not been mentioned.

The Same Author says that by disregarding ( the rule as to ) the prescribed place, the conclusiveness of an ordeal is destroyed "Ordeals adminis-

tered at an improper place or time, as also those which are performed outside the habitation, bring about a disruption of the matters in hand, here (there is) no doubt" "Habitation" : *i.e.* place of residence, peoples' place, outside of that, : *i.e.* in short, in a lonely place By this it comes to be stated as of course, that ordeals must be administered in the presence of the people only It has also been stated by **Putāmaha** "The ordeals should be administered by the king or by a person duly authorized (by him) in his own personal presence, as also of the *Brahmanas* learned in the *Vedas*, and also of the subjects likewise". 'Duly authorized', : *i.e.* the Chief Judge. 5

### Thus the Place for the Ordeals

10

Now the Rule regarding the Preparation of the Balance — *Dhātānirmānavidhih*

There **Nārada** <sup>1</sup> "One should cause it to be made of the *Khīdīra* wood (which must be) without notches or withered portions, or of the *Simsapā* wood, or when that is not available, of the *Sāla* wood, and devoid of rents of *Añjana*, *Tinduli*, *Sara*, *Timisā* red sandal, woods of these kinds should be determined upon for the balance By saying 'of these kinds, the Author indicates that in the absence of those stated above, any other sacrificial <sup>2</sup> tree may be taken 15

It has also been pointed out by **Putāmaha** After cutting down a sacrificial tree preceded by (the incantation of) the hymns and in accordance with the rules and after saluting the guardian deities of the quarters, the balance should be constructed by the wise The hymn in honour of God *Soma* should be muttered softly at (the time of) the cutting up of the tree An option has been stated by some as regards the hymns to *Soma* or *Varispati*, on account of the result to be secured being similar The use of the word 'balance' is intended to indicate its surrounding parts also Therefore for the purpose of the feet, posts, also a tree should be cut 25

Hence also, the measure of a balance with its surrounding parts has been stated by the Same Author "The balance should be of four *hasas* and the two feet should also be constructed of the same size The space intervening between the two however, should be two *hasas* or half a *hasa* more. 'The two feet : *i.e.* the two pillars holding the wood called *axi*, which supports the balance, 'of the same sort', : *i.e.* the meaning is four *hasas* by measurement 30

85

- This measure of the two posts should, moreover, be understood to be of the upper part of the two arms to be dug up, therefore these become of six *hastas* (together) with the part to be dug up To that effect, moreover, Vyâsa <sup>1</sup> 'These two heads have been stated to be dug for two *hastas*, hence the size of these two by measurement has been stated to be six *hastas*' The size of the axis, however, has been automatically established by the mention of the two feet and the intervening space, and therefore has not been separately mentioned From this, it should be understood that the axis should be so constructed that it will not protrude beyond the top portion of the pedal pillars, so that it should be more than two or two and a half *hastas* A *hasta* moreover, is made of twenty four *angulas*, so has been pointed out in Another Smṛiti 'Eight middle portions of a slanting *yata* or three *irihis* held topwise has been stated to be the measure of the *angula*, a *viṣṭi* is of twelve *angulas*, (and) a *hasta* is made up of two *viṣṭis*' The balance etc should be made stout to such an extent that these would become strong or the particular degree of stoutness should be known from usage, as no particular text has been prescribed
- 15 PAGE 106\* In regard to the balance however other particulars have been pointed out by Pitāmaha 'A quadrangular balance should be made which should also be strong and straight rings also should be fastened at three points with effort 'Rings' i.e. iron bracelets at three points, i.e. near the two ends, and at the middle also, the word 'rings' is indicative of other iron parts also Therefore two iron nails slightly bent and resembling the horns of a crab should be fixed near the two ends for holding the strings of the scales In the middle, however, an iron chain should be fixed in the axis wood for the purpose of placing the balance So also Nārada <sup>2</sup> "Quadrangular with the pieces such as the balance, and hooks etc" Here, by the word 'balance (*dhata*) is intended the cord connected with the centre of the balance by the word 'hooks' are expressed the nails near the end by reason of the resemblance Thus the meaning is this The balance should be fixed with iron chains etc which would ensure stability By the use of the word *āḍi* etc the author points out that in the axis also there should be one hook

Likewise, the method of the instalment of the post also has been pointed out by the Same Author — 'Placed on the south and the north, the

two being joined together, and after having made the ends even on that ground, the balance should be established on the two" The meaning of this The footposts placed at an equal distance in the direction of the south and the north, having made the two ends tied together on the axle wood, in the midst of these two, on the axle of the balance, the scales should be established 5

How then should it be established? So the Same Author proceeds "After having well tied the iron chains gathered in the middle space, one knowing the law should place the balance well joined together east to west." 'East to West' viz East to West lengthwise It should be made with its end towards the east So says *Prāmāṇya* "The balance should always be placed facing the east, unmovable and on a pure place" 10

*Nārada*<sup>1</sup> states for the purpose of ensuring steadiness "The two posts should be dug in every case to the depth of two *hastas* below the ground in that manner" By saying 'in that manner' the Author points out that something else also should be constructed as part of the balance, such as the arch and the like That has, moreover, been pointed out by *Prāmāṇya* "The arches should be created in the rear of both the posts which should always be higher by ten *angulas* than the balance, then two suspenders of clay should be prepared, hanging downwards from the arches tied together by ropes and touching the top of the balance The balance should always be caused to be constructed decorated with huntings and flags a balance house should be caused to be constructed wide in extent, and of great height and of white colour, at such a place from where when placed, it would not be disturbed from the outside by the Chanakas or crows The guardian Deities of the quarters and the like should be duly established in all directions and at the three junction periods one should duly worship these by means of scents, flowers, and smeared The king should cause it to be furnished with doors and locks guarded by sentinels and furnished with earth water, and fire and should not leave it unattended 20 25 30

Here, it has been stated by some that the construction of a house etc. is on account of the object of (having) a fixture for the balance and it is not due to any injunction or rule, and therefore when there is no desire to fix it it should certainly not be constructed

Thus the Procedure regarding the preparation of a balance

35

side of India Dhara, Dhruva and similarly Soma, Apa, Anila, Nala, Pratyusha and Prabhata, are known as the eight Vasus

"Similarly the group of the Adityas should be placed between the Lord of the Gods and the Isina Dhātā, Aryama, and Mitra so also, Varuna, Amsu and Bhaga, likewise Indra, Vivasvan, and Pāśi and Parjanya known as the tenth, then Tvashti, and then Vishnu not the last though born of the last, these are the twelve Adityas described by their names "

' The point towards the west of Agni is known to be the place for the Rudras Virabhadra, Sambhuh, Girisā of great fame, Ajukapād, Abirbhadhaya Pundā the never defeated, so also Bhuvanadhisvarah, Kapāli the lord of the people Shānnah, Bhavah, and Bhagavān are known to be the eleven Rudras "

' Between the Lord of the dead and Rakshas a place should be assigned for the Mother Deities viz Brāhmī, Maheswarī, and also Vaishnavī, Vārahī, Mahendri and Chāmundi accompanied by the bands of the followers "

' The point to the north of Nirrti is known to be the place for Ganesa and the place for the Maruts is said to be at the northern side of Varuna, Gaganah, Sparśanah, Vāyuh, Anilah, and also Marutah, Prīnah, and the two viz, Prānesa and Jiva are known as the eight Maruts

A wise man should invoke the goddess Durga at the northern side of the balance "

Here as before, also the use of the word 'balance' is indicative by an extension of the particular ordeal which has been contemplated In this manner, one should offer worship to the deities which have been invoked in their respective places

To that effect proceeds the Same Author "The worship of these deities is, however, known to be by repeating their own names.' There also, the Same Author mentions the order "Having offered worship to the Dharma commencing with the arghya and ending with the decorations, thereafter, one should offer arghya &c to the other deities ending with decorations " 'Of the other deities' : c commencing

PAGE 108\* with Indra and ending with Durgā. The offering of arghya etc. to these should be in accordance with the sense of the words, and not in pieces For in that case, there would be the incongruity of a simultaneity deduced from the text of the details After having offered decorations to Durgā, to Dharma, and to the deities

This procedure, moreover, is common to all the ordeals. So says the Same Author "This rule and the procedure in its entirety, one should utilise in the case of all the ordeals. The invocation of the Divinities, likewise, should be done in the same manner." The meaning is that all the acts, viz, commencing with the invocation of Dharma and placing the earth on the head of the subject of purification should be done in all the ordeals.

Likewise, at the end of all the ordeals, a good Dakṣiṇā which will create satisfaction should be given to the head sacrificial priest and others. To that effect is the Same Author "One should give satisfaction to the sacrificial priests, the head priest, and the other Āchāryas by means of Dakṣiṇā."

Thus ends the Procedure common to all the ordeals

Now the Procedure for the putting up of the balance Dhatārōpaṇavidhiḥ

There Nārada "After having well fastened the two scales by the hooks of the beam, he should place the man in the one scale and a stone in the other." The meaning is that having fastened the two ropes to the two scales by the hooks and the beam prepared according to the rules. The use of the word 'stone' is indicative, by an extension, of earth and the like also. Hence also Pītāmaha "The two scales should be fastened to the sides of both (the posts) and (blades of the) darbha grass should be placed in both the seats with their ends turned towards

the East. In the scale towards the West should be weighed the parties (performing the ordeal) and in the other the clean earth, avoiding the bricks, the ashes, stones, skull, and bones."

The combination of the bricks and the stones with the earth is prohibited, and there is no optional rule, these two also having been prescribed. To that effect Nārada "There he should place a basket and fill it with bricks, mud and grains of sand." The meaning is that with bricks, with stones or with sand grains. Or the basket may be filled with beans as has been stated in another Smṛti "Or a heap of beans." Thus the rule of option should be understood for measuring the balance in the case of stone, earth, bricks, sand, grains, and beans. Hence also has been stated by Nārada "The ball of earth and the accused person, one should hold equally in the balance. In the northern scale, one should hold the person, and in the southern the stone."



The expression 'in the northern scale' has a reference to the balance, constructed extending from the southern to the northern direction. Although a construction in that manner has not been stated before, still from this very text, it has been established as of course that having constructed the foot pillars stationed east west, the balance should be constructed leading towards the north, and there is no contradiction whatsoever.

To the expression 'should hold in the balance,' the supplement is 'any one from among the (guilds of) tradesmen etc.' To that effect also is Vishnu<sup>1</sup>. The same moreover a man from among the guilds of tradesmen goldsmiths or of braziers should hold (equally). 'The same' is the balance. When held by any one of all these they should be appointed by the king for the purpose of marking the equipoise. To that effect is Pitāmaha. Persons expert in the weighing of balances should be appointed as judges such as the tradesmen goldsmiths, and the braziers likewise also. These when appointed, moreover should carefully inspect all around, to that effect also Narada<sup>2</sup>. Goldsmiths merchants and skilful braziers experienced in the art of weighing should inspect (the beam of) the balance.

In regard to (the functions of) the inspectors says Pitāmaha. 'The judges should always make the balance even and in a line with the suspender and the wise should place water over the balance, that balance should be considered as even wherein the water does not move. The clay suspenders hanging down upon the two arches the connection of these which is even on the tops of the two rings is the balance even and in a line with the suspender. So also Narada<sup>3</sup>. 'In the first weighing, the weight of the man should be ascertained with the aid of experienced men and the arch marked at the height which corresponds to the even position of the two scales.'

After ascertaining the evenness says Vishnu<sup>4</sup>. 'The equipoise and the man having been made equal in weight, and (the position of the scales) well marked, the man should be made to descend from the balance. 'Well marked' is for the purpose of marking the evenness, marked with white lines at those points where the ropes of the balance are joined together.

After the descent, says Pīlāmaha "Having first got the man weighed, and after having got him down the balance should always be kept adorned with bunting and flags"

After these preliminaries the procedure common to all the ordeals, i.e. commencing with the invocation of the Dharṇa and ending with the placing of the parchment upon the head of the accused, should be observed. For the Same author says "This *mantra* and the whole of this procedure, one should observe in all ordeals, in the same manner, the invocation of the divinities should be made" There in regard to the material for the worship of Dhṛma, Nārada states a special rule \* "With red sandal paste, red flowers, curdled milk, fried puddings, rice grains etc. first he should offer worship etc. to the balance, and then should do honour to the respectable" 'Balance' : i.e. Dharmā, posted in the balance, 'The respectable, such as Indra and others

After placing the leaf on the head of the accused, says Pīlāmaha 15

'One knowing the Sastra should invoke the balance

PAGE 110 \* thus 'O balance, you have been created by Brahman for testing the sinful, from the letter *dha* (in your name) you are Dharma incarnate, and since from the letter *ta* (in your name), you determine the guilty man when weighed (in you), therefore you are called Dhata (धृता)' 'One knowing the Sastra' : i.e. the chief judge, as the Same Author has stated 'In regard to the ordeals, the Chief Judge should duly perform all the acts

Thereafter, the accused also should invoke the balance To that effect Yājñavalkya 1 When men versed in holding a balance have seated a party therein, weighed him against an equal weight, marked a line, and caused him to descend (100), O balance thou art the abode of truth, and wert created by the gods in the olden times, therefore, O, auspicious one, speak the truth, and free me from suspicion (101) O Mother, if it be that I am the sinner then carry me down If I am pure, carry me upwards,' thus should he (make an) appeal to the balance" The meaning is that with the *mantra*, commencing with 'O balance', and ending with 'me upwards', the accused should make an appeal to the balance before getting in again

Thereafter the Chief Judge should seat him to again To that effect Nārada 2 "After having admonished with solemn imprecations, he

should cause the man to get into the seat again, when there is no wind nor rainfall, and after having placed the parchment on his head" 'After having admonished with solemn imprecations', i.e. the meaning is, that after having bound the holder of the balance with solemn oaths. The oaths  
 5 also have been set out by the Same Author. 'Those regions which have been stated for a Brahmicide, those regions (which are) for false witnesses, these regions are for the holder of the balance who holds the balance dishonestly."

After seating him again says Nârada<sup>1</sup> "When he has ascended the  
 10 scale, a twiceborne man holding the scales (in his hand) should address thus, 'Thou art called *dhâtâ*, which word is synonymous with *dharma* (justice). Thou knowest of all beings the bad and good actions also, thou alone O God, knowest what human beings do not know. This man who has been arraigned in a cause, is (being) weighed upon by thee, therefore he  
 15 pleased to free this man, who is under a suspicion, according to Dharma. Thou art far superior to Gods, demons, and mortals in point of veracity, O divine lord you are linked with truth by means of the auspicious and the inauspicious signs. The sun, and the moon, the fire, the wind, the sky, the earth, the water, the heart, the (god) Yama also, the day, as well as  
 20 the night, and the two evenings, and Dharma also, (each one) knows the action of men'. The meaning is that after having duly placed the accused in the scale in a proper position, the Chief Judge should address commencing with 'O Dharma' and ending with (the word) 'action'.

After the pronounciation of the mantia *Pitâmaha* 'One knowing  
 25 astronomy and who is the best of Brâhmanas should observe the interval of time, the interval of five *vinâdis* should be determined by those who are experts in determining time. Among the umpires the best of the Brâhmanas who would depose only to such (a fact) as has been seen by them, who are wise, pure, and who are not covetous should be appointed  
 30 by the king, from their verdict should be inferred the decision about innocence or guilt.

The interval (required) for pronouncing three hundred long letters make five *Vinâdis*. To that effect also another Smṛti, "(The interval required for pronouncing) the long letters is (known as) *Prâna*, six  
 35 *Prânas* make a *Vinâdi*.' Thus, therefore, the meaning of the aforestated texts to be inferred is that the Brâhmana conversant with astronomy by pronouncing long letters should measure up the interval of five *Vinâdis*.

the accused should during that interval, remain in the balance, during this interval the appointed umpires should make up the decision as to the innocence or guilt by means of the signs of success or defeat

What then are the signs of success or defeat? Anticipating this, says Narada <sup>1</sup> "Upon being weighed, if he increases <sup>2</sup> he is undoubtedly innocent, if (his weight remains) the same or (if it) becomes less, the man cannot be declared innocent"

As to what moreover has been stated by Pīlāmaha "If he becomes less, he will not be (regarded as) innocent, according to some however, if he remains the same, he is not innocent, one who remains the same should be regarded as guilty of a petty offence, while one guilty of a great sin becomes less, there the expression 'According to some' is intended as evidencing respect, and not intended as indicative of innocence according to his own opinion, for persons committing petty offences are also guilty, therefore, there is no distinction whatsoever in the defeat of one who becomes less and one who remains the same. In regard to the punishment and the penance however there is a great distinction, for punishment and penance follow (the degree of) guilt

As for what has been stated by Brhaspati <sup>3</sup> "If one who is accused becomes less in the balance, he shall be held guilty, but if he remains even he should be weighed again. If he increases, he becomes successful." The meaning of that is this. The decision about the guilt of one who stands even (in the balance) is not to be made after the proceedings of the first weighing, but if when weighed again, there is still the evenness also then the guilt should be determined upon. In the same way, in the case when the scales are broken or such other like cases also the guilt or innocence of one who is being weighed again must not be decided upon. To that effect also Kātyāyana "When the scales break, or the balance is broken, or the ropes also as also when a doubt arises as to the innocence, one should again test the man"

The (subject of) doubt about the innocence however, has been elaborated by Narada "When it is broken up in the top points of the balance, or when the level point has deviated, or when it has been shaken by the wind, or goes up or down even, or also when it suddenly slips away, then one should resort to neither (conclusion)." The meaning is

1 Ch I 283

2 अति वृद्ध Dr Jolly translates, 'if he rises

3 Ch X 19

4 Ch. I. 284

that when the ends of the balance have slanted sideways, as also when the the water placed for ascertaining the evenness has moved, or also when under the force of the wind the balance quivers upwards and downwards, or when it slips off from the hand of the holder of the balance, then one  
5 should not give a decision as to success or defeat

As for what again has been stated by him "Should the base burst, or the scales break, or the beams of the hooks split, or the strings burst, or the transverse beam break, the accused shall be acquitted" that also has a reference to where the cause of the breaking etc. is not visible<sup>1</sup>, for like  
10 the ordeal, the breaking<sup>2</sup> up of the scales etc. is the cause of purification Here Pitāmaha "When all the umpires declare the innocence or guilt to the king, then the king surrounded by the good people, should call up the acquitted person and do him honour, and also should bring about the satisfaction of the sacrificial and the head priests by *dakṣiṇas*. The  
15 king causing this to be observed, after having experienced enjoyable luxuries, obtains great fame, and becomes entitled for the supreme Brahma"

Thus in the *Smṛticandrikā* the procedure about the placing in the Balance

Now the Procedure about the (ordeal of) Fire *Agnidhikā*

There Pitāmaha "I shall describe the procedure for the fire (ordeal)  
20 in details as dictated in the *Sūtra*, one should cause eight circles to be prepared, and the ninth in the front likewise. The meaning is that at a wellknown place as prescribed by the rules such as a temple of god or the like, having performed the purification (ceremony) of the ground by digging and sprinkling, there the  
25 Chief Judge should prepare nine circles ending towards the east, after observing a fast, being directed by the King's command

These, moreover, should be prepared with cowdung as the Same Author has stated "These, moreover, should be prepared by (means of) the cowdung and should be properly sprinkled" The internal extent and measure of these both have been pointed out by *Yājñavalkya*<sup>3</sup> "A *mandala* (circle) should be understood to be of sixteen *angūlas*, and the same should be the space intervening" The meaning  
PAGE 112\* is that the circles and their intervening spaces should (each) be made of the extent of sixteen fingers

1 On p 111 l 17 for न दृश्यते read न दृष्टिम् &c

2 For शिक्यद्विद्विकारणाय read शिक्यद्विद्विकारणाय

3 Book II 106 (2)

The presiding deities of the Mandalas have been pointed out by Pitāmaha : "The first circle should be dedicated to the god Agni (Fire), the second has been stated to be for Varuna ; the third for the god Vāyu (Wind) ; the fourth to the god Yama ; the fifth for the god Indra ; the sixth is stated to be for Kubera ; the seventh to the deity Soma ; and the eighth to the Sun likewise ; the ninth for all the divinities ; this is the rule known to all the experts in ordeals."

Here the Fire is worshipped, therefore, it is (designated as) 'dedicated to Agni', as a mandala is not possible to be for Agni either upon the ground <sup>1</sup> of the oblations being offered, or because of (its so having been mentioned in) any *Sūkta*. In this manner also should be considered (the position) in regard to Mandalas for Varuna and the others, to be by reason of their being placed there for the purpose of worship.

Therefore as in the text 'Let the cup ( *Chamasa* ) ' go away to the *Hotâ* etc.', by reason of the ( collective )' appellation indicated in the directing mantra viz 'The cup be for the *Hotâ*,' as the right of the *Hotâ* and the others arises, in these places, of consuming in the cup, so by reason of the appellative 'of the Agni, etc.,' the worship of Agni and the rest should be made in their respective places ; this is established from this very text

Therefore, after the sprinkling of the circles ( *mandalas* ), one should offer worship to the presiding deities of the *mandalas*. Thereafter, one should throw *darbhaks* with their ends towards the east, as the same Author

1 The meaning is that there is no offering of oblations prescribed in this connection, nor has any special section of the Veda directed this to be done.

2 See Jaimini III V 22 (in the 7th *Adhikarana* and also the 8th and 9th *Adhikarāṇas* 23-30 *Sūtras*). The *Sūtra* reads thus चक्षुष्यं सवातान्तरोगरं न विभित्वात्. By reason of the *Samīkhyā* in the case of spoons (or cups) and of the mention of the connection being for it.

In the *Jyotiṣāpoma* sacrifice is the Vedic Text वे॒दो ह॑नुम॒स्य व॒शम॒ग्नं व॒शो॒द॒गं, व॒शत॑मान॒स्य.  
Here the position is suggested that, as there is no specific text to that effect, it does not sanction eating from the spoon. To this the answer of the *Silhānta* is that here there is a general call for the *Chaman* (च॒म॒नो) : i. those who are entitled to the use of the च॒द॒स or spoon, and thus they are collectively designated by the appellation (समा॒स॒त्वा) as an authoritative statement by the *Āchāryas* called स॒वा॒स॒राः. By the etymology of the word also, the conclusion is that the priests are entitled to drink Soma.

Applying the rule here, the Author says that by the very fact of the सगन्ध, or appellations such as अक्ष, ताम्र &c. it is established that the several deities named should be offered worship.

has stated - " At each *mandala* should be offered kusa grass as directed in the Śāstra " To the southern direction of the first *mandala* and not at a long distance, after having established a *Grhya* fire, one should perform the pacificatory <sup>2</sup> sacrifice (*Śānti homa*), as the same Author has  
 5 stated ' With the object of securing peace (*Śānti*), one should offer one hundred and eight oblations of ghee into the fire".

The sacrifice moreover, shon'd be offered with the oblation *mantra* ' To agni, the purifier, this oblation, Svāhā ' so has been stated by the commentators

10 Thereafter, in that fire, one should heat the iron ball To that effect Pitāmaha " After removing all angles and making it even, one should heat in the fire a ball of iron of eight *angulas* and weighing fifty *palas* ' 'Even,' : *e* not low, nor high The mention of the word *samam*, 'equally', again a second time is with the object of ordaining that one should  
 15 heat it all round, one should heat a ball of sixteen *palas*, vide the text of Sankha and Likhita ' Thereupon after having taken into the cavity of his hands joined together a red hot iron ball weighing sixteen *palas* and covered in seven *avāttha* leaves, he should go seven times to the boundary line "

20 The heating however, should be done by an ironsmith ; so says Nārada <sup>3</sup> "One who is a brazier by birth and moreover who is an expert in working with fire, and one also who has witnessed the performance elsewhere, by such a one should the iron be heated in the fire "

By the expression 'one who has witnessed the performance elsewhere',  
 25 is indicated that as in the case ordinarily, for the purification of iron, when well heated it is sprinkled with water, and having been heated again, it is again thrown into the water and the heating is done again with the object of accomplishing the perfection of the iron, in the same way should be done here also

30 There, while the third heating is proceeding, one should perform the ceremonial common to all the ordeals, such as commencing with the invocation of Dharma, and ending with the placing of the leaf on the head So also Pitāmaha "This *mantra* ceremonial in its entirety, one should utilise in regard to all the ordeals, and one should perform the  
 35 invocation of the gods in a similar manner "

1 समारुपा A 'name' or appellation

2 शान्तिहोम a sacrifice with the object of avoiding evil शांते or शान्पहोमे

3 Ch I 288

There, in regard to the means for the worship of Dharma the Same Author states a special rule 'There, the lord of men (i.e. the King) should cause the worship of the fire (Lat consumer of oblations) to be performed with red sandal paste and perfumes and with red flowers likewise' In short, of the Dharma invoked in the fire in the red, hot iron ball of the fire Red sandal paste and perfume, (make together the compound word) 'red sandal paste and perfume', with these two This rule is not in regard to the means of the worship of the god Indra and others, as it has been particularised by the word 'of the fire' 5

Harita states the procedure to be followed by the accused after the affirmation leaf is placed on his head 'Thereafter he should stand with his face turned towards the east and the fingers of his hands stretched forward with wet clothes on, and also duly purified having placed the leaf on his head' Here, moreover he should take his stand in the *man lala* as *Pitāmaha* has stated He should stand in the *mandal* to the west, with his face turned towards the east, and duly purified 10 15

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*Vishnu*<sup>1</sup> states what is to be done by the (person) accused as well as by the Chief Judge 'At the beginning itself he shall mark the hands in which paddy has been crushed (The two hands) in which paddy has been crushed are the hands in which paddy has been crushed By this it comes to be stated as of course that the accused should crush the paddy with his hands and stand with the fingers of his hands stretched out The meaning of the expression 'shall mark', has been elaborated by *Narada*<sup>2</sup> 'He shall carefully mark the signs on both his hands which were made before and were (being) hidden with scars and without scars also The meaning is that with the object of marking those which existed before the holding of the fire he should make signs like the swan's feet by means of the red lac die at the scarred spots in the two hands of the accused So also the Same Author says 'At all the scars on both the hands, he should make the marks of a swan's feet 20 25 30

*Yājñavalkya*<sup>3</sup> states the performance at the next stage "After having marked the hands in which rice paddy had been rubbed thereafter one should place leaves of *asvattha*, and as many (rounds of) thread should he coil around *Vishnu*<sup>4</sup> also 'Thereupon, he should place seven leaves of the *asvattha* tree in the hands stretched out, of the person with his face turned towards the east These moreover, together with both (his) hands, 35

1 Ch. XI 10

2 Ch. I 301

3 Book II 103

4 Ch. XI 3-4



he should circle round with a thread' By the use of the word *tatth*, 'thereafter', at both places, this appears to be conveyed viz according to this view, the offering of oblations etc which has been stated in other *smritis* to be performed in the interval between the marking of the hands and the placing of the leaves that should not be done

Thus moreover, what has been stated by Nārada, viz In this manner, having done the marking of the hands of the acensee one should offer oblations of ghee into the fire with (the recitation of) mantras with the purpose of securing peace When the Gods and the guardian deities of the regions have been appeased, he should turn his face towards the sun and pronounce loudly this mantra 'O Fire, thou movest in the midst of all beings and art witness, thou carriest the oblations to the gods, and when oblations are offered to you you bestow peace Whatever (be the) sinful or meritorious acts of men which he hidden thou alone knowest O God, which mortals do not know Since I who have been accused at law am placed under a suspicion be pleased to free me according to Dharma While he is addressing in this way, the hands of him the intelligent one should be covered with seven even leaves of *tattha* The meaning is 'with mantras', i.e. such as 'A *Kṛṣṇena rajasa* etc (with black dust etc), with nine mantras, bringing out the planets the Gods such as the Vasus Adityas and Rudras, and also the guardian deities of the quarters, when appeased with the oblations of ghee offered in their respective names all that should be regarded as optional

As for the characterisation stated of the leaf viz even, that is always applicable Thus, in the case of both alternatives the leaves should be of even size likewise in regard to the encircling thread also a special rule has been stated by the Same Author He should encircle both hands with seven white thread yarns 'White, i.e. of white colour

As for what has been stated in Another *Smṛiti* 'When carrying the red hot iron in both his hands covered with seven *śukla* leaves, and if unburnt at the seventh step he is (regarded as) innocent, that has a reference when the *tattha* leaves are not available As says Pitamaha 'From the *pippala* is the fire produced *pippala* has been declared to be the king of trees therefore, a wise man should place its leaves on the two hands The meaning is that *śukla* is so highly praised therefore its leaves only should be taken as far as possible The *S'am* leaves have also been added to the leaves stated before To that effect another *Smṛiti* 'Seven *pippala* leaves or the *sam* leaves similarly, of the *dūrva*, seven

leaves, and rice besmeared with curds, one should place" Likewise one should place flowers also, as Pitāmaha has stated "Seven *pappala*, whole rice grains, flowers and curds".

Thereafter, when the iron ball is heated, the Chief Judge should respectfully address the fire in the iron ball with the mantra commencing with "O fire, thou art the Gods" etc and ending with "O great Fire" To that effect Pitāmaha "When it has been heated, thereafter, being duly purified, one should invoke the fire, after, however, having performed the invocation of the Gods in accordance with the rules

PAGE 114\* O fire, thou art the four gods, thou art also offered oblations at the sacrifices, thou art the mouth of the

Gods, thou art the mouth of the philosophers Being in the womb of all beings, thou knowest all their good and bad deeds, since thou purifiest the sins, thou art called the purifier In the case of sinners O Fire, exhibit thyself, appear in flames, O thou holy purifier while to those who are pure in thought, be cool, O great Fire "

The mention of the invocation of the gods, such as Dharma and the rest, is only an extended application of the ritual commencing with the invocation and ending with the purification of the hand of the accused, and the placing of the flower Vishnu<sup>1</sup> however states another mantra in the form of an address to the fire in the iron ball 'Thou O Fire dwellest in the interior of all created beings like a witness O Fire, thou knowest what mortals do not comprehend This man being arraigned in a cause, desires to be cleared from guilt Therefore mayest thou deliver him from this doubt according to law' This mantra in the form of an address is to be used in entirety and not by alternatives, the object begged for, being particularly concentrated in the person of the accused having to be separately achieved in the open

As for the invocation in the text of Narada<sup>2</sup> var "When it has been heated at the third heating a pure Brahmana who reveres the truth and is foremost amongst the *sabhyas*, should address it as follows 'Listen to the law of Manu which is superintended by the guardian deities of the world. Thou, O Fire, art the means of purification and the exalted mouth of all the gods Thou, dwelling in the heart of all beings, knowest this affair, Truth and falsehood proceed from thy tongue Deem not to show thyself unworthy of the character thus attributed to thee in the Vedas and other books This man (the defendant) has been thus charged by the other

man (the plaintiff) and has denied the charge (declaring) 'I will hold the fire, so as to show that it is all untrue' Thus confining in truth, this man is holding thee Therefore O Fire, be cool for him, if he is speaking the truth If, however, he be telling a lie, as a sinner, burn his hands'

- 5 has been stated as the invocatory address, that alternates optionally with the invocatory address stated by Vishnu and Pitāmaha as having the same sense.
- When the invocation is made as stated by Narada, then the Same Author states the procedure to be followed after the invocation "This prayer having been carefully written on a leaf and recited, he should
- 10 fasten the leaf on his hand and after having done so, should then give him the iron ball" The meaning is that after having made him carefully listen to the import of the aforesaid invocatory prayer, as also the meaning of the *mantra* stated on the leaf which was placed on his head, and after depositing the leaf in its proper place, the iron ball should be
- 15 given (into his hands)

- When however, the invocatory prayer is made as stated by Vishnu and Pitāmaha, then after that is offered, Pitāmaha states the procedure 'Thereafter, taking it up the king intensively devoted to Dharma, by means of a prong, should place it in his hands or one appointed' The
- 20 order of words is that 'having taken up the iron by means of a prong' 'One appointed' i.e. the Chief Judge

- Yājñavalkya<sup>1</sup> states the procedure to be observed before the placing in the case of both alternatives "O Fire, thou pervadest the innermost parts of all created beings you are the purifier O omniscient declare
- 25 like a witness the truth about me from my virtues and sins' After he has addressed in this manner, he should place in both his hands a smoothened ball of iron weighing fifty *ṛśas* and (made) redhot by fire' 'While he has addressed in this manner,' i.e. while he was making the invocation of the fire as aforesaid 'of his' i.e. of the accused

- 30 The Same Author<sup>3</sup> states the procedure to be observed by the accused after the iron ball is placed "He having taken it (into his hands) should slowly walk through the seven *mandalas*" Its meaning has been expounded by Vishnu<sup>4</sup> That man after having taken it, should proceed through the (seven) circles putting his steps not too hurriedly, nor lingeringly either

- 35 "Through the Circles i.e. the meaning is, commencing with the second and ending with the eighth To that effect also Nārada<sup>5</sup> 'Having taken it up in both his hands, when addressed by the Chief Judge, and having

stood in one, from there he should proceed to the other seven in a straight manner Without being confused, he should go slowly

PAGE 110\* unprovoked by the fire should not let fall without reaching (the point of) the ground which was fixed

upon, he should not go beyond the *mandalas* nor should he place his foot on this side and having gone through the eighth *mandala*, the man should let the fire go from there " "In one," i.e. in the first *mandala*, 'from there, others' i.e. the second and the following The letting down of the fire moreover, should be done in the ninth *mandala* as *Pitāmaha* has stated "After having gone to the eighth *mandala*, a wise man should throw (it) down in the ninth "

After the placing down, *Nārada* states what is to be done by the umpire "He should make an examination of the hands of him who has left off the ball, i.e. the implication is with a view to ascertain the innocence or guilt

There, the Same Author mentions those signs which are indicative of innocence In the signs observed before there one should mark others also If another circle of red colour caused by the fire (is seen) such a one should be regarded as impure and deeply immersed in the path of untruth The meaning is that one in both of whose hands is observable any tumour or the like (mark) caused at any place one should know such a one to be unpurged One, moreover, in whom none such is found, such a one should be known to be innocent

To that effect also *Vishnu* ' One whose hands are burnt even so little, shall be deemed guilty, but if he remains wholly unburnt that man is freed from the charge '

When however there is a doubt whether he is burnt or not burnt there says *Nārada* ' If it cannot be determined whether the hands are burnt or not, one shall give him paddy rice to be crushed with all his might seven times The grains having been crushed by him if he is declared in this way to be unburnt by the members of the Court he shall honourably be let off as (being) innocent if he is burnt he shall be punished in due order '

*Pitāmaha* also ' When it was carried thereafter, one should rub paddy rice or barley if to the end of the day there be no disfiguration, one should declare him to be innocent The meaning is that when both the hands are without any disfiguration, one should declare him to be innocent So it recd as When both the hands are without any

disfiguration' According to their opinion immediately after the carrying, the innocence should be determined

*It may be said, indeed if the reading viz 'at the end*

AN OBJECTION of the day, he should be declared to be innocent' be adopted there would be a contradiction with the text of Yājñavalkya<sup>1</sup> 'After he has thrown away the (bill of) fire, and rubbed his hands with rice, if he (is found to) be unburnt he should obtain an acquittal' (The Answer is) Do not say so

For as is the case with the rule 'After taking away, he offers the *paridhis*<sup>2</sup> as oblations into the fire', the general termination is possible even if there be no close contiguity

As for what has been stated by that Author<sup>3</sup> viz 'If the ball falls down in the way, or in the case of a doubt, he should carry it again', that has a reference where the doubt is not dispelled, even when the paddy rice have been rubbed, or in reference to a state of doubt as to whether the non-burning or burning will be the result of truth or falsehood or whether these resulted owing to attention or inattention as to the visible mark.

In the text 'If the ball falls down in the way', should be understood as implied, the text 'And if he is not found to have been burnt' For if he is found to be burnt, the want of innocence having been determined, there would be no room for carrying again Hence also Nārada<sup>4</sup> "He, however who lets it fall in the midway, and is not found to have been burnt, he should be made to carry the fire again, this has been fixed as an established rule" 'And is not found to have been burnt' i.e. in the cavity of the two hands, is to be understood

If he is found to be burnt at any other part, even then he should certainly be made to carry again To that effect also Katyāyana If the accused person slips off or is burnt at any other than the (proper) place, the gods do not regard him as burnt, to such a one it should be administered again also' Again also i.e. even once more

In this connection Nārada<sup>5</sup> "Adopting this procedure should the ordeal by fire be administered at all times, has it been stated otherwise than in summer and during very cold season"

Thus ends the procedure about the (ordeal of) Fire

1 Book II 107 (1)

2 गृह्यः These are the three pieces of twigs placed on the three sides of the altar excepting the east they are taken from the *Sami Pippala* or the *Lumber* tree

3 Book II 107 (2)

4 Ch I 238

5 Ch I 300

Now, as (the ordeals of) Water and Poison have been given up to be administered, without mentioning the procedure therefor.

PAGE 116\* the procedure for (the ordeal of) Kosi is being described.

### Kosavidhi

There Yājñavalkya<sup>1</sup>: "Having worshipped the stern deities, he should collect the water in which they were bathed." 'Stern deities,' such as Rudra, Durgā, Ālitya, and the like.

The meaning is, that the Chief Judge after having observed a fast, having duly worshipped any of these with the saṃkalpīste, rice grains, etc. and after having bathed (it), then he should carry that water of its bath to the place of the ordeal. Having posted the man there, and after having performed the procedure common to all the ordeals viz. commencing with the invocation of Dharmā and ending with the placing of the leaf upon the head of the accused, and turning the accused with his face towards the east, he should make him drink three handfuls from the water as prepared before. A *amṛita* for three handfuls moreover, should be made at that very time with cowdung, so has been stated by the commentators. Having made him (stand) facing the sun, and after making him hear, one should make him drink. To that effect Yājñavalkya<sup>1</sup>: "Thereafter, making him hear (the *mantra*) he should make him drink from that water three handfuls"

"Having invoked the terrible deities, from the water of their bath should be drunk three handfuls of water, uttering at the same time the words, 'I have not done thus intentionally', with his face turned towards the deity (invoked)'.

In this way, it may happen that the Kosa may be administered by  
 o bringing in the bathwater of any deity whatsoever. So **Pitāmaha** states a regulating rule "Of that deity whose devotee he is, the water should be drunk by him. In the case of an equal regard for all the deities, that of **Āditya** should be given to be drunk. The water of **Durgā** should be given to the thieves, as also to those who make a living upon their  
 10 weapons. The water which is of the (resplendent) Sun, a **Brahman** must not be made to drink that"

Thereafter, the Same Author states the rule regarding the part to be bathed "Of **Durgā**, one should cause the trunk to be bathed, while of **Āditya** the circle, while of the other deities also, the weapons should be bathed"

15 After the drinking of three handfuls says **Kātyāyana**: "Now, if a calamity through fate occurs within three weeks the accused should be compelled to pay the amount, and a fine also" 'Calamity through fate' is the appearance of a disease caused through divine agencies

The diseases caused by divine sources have been pointed out by the  
 20 Same Author "A wasting acute diarrhoea, eruptions, pain in the palate and bones, an eye disease, a throat disease also, and delirium is caused, headache, and the bursting of the arms also, these are divine diseases for men"

Other causes also, indicative of a defeat have been pointed out by  
 25 **Vishnu** <sup>2</sup> "He to whom happens within two weeks, or three weeks, an illness, or fire, or the death of a relative, or a heavy visitation by the king, one should know such a one to be guilty, if otherwise, (to be) innocent".

By **Nārada** <sup>3</sup> have been mentioned (the signs of) a defeat, such as destruction of property and the like "If within a week, or also within two weeks, occur to him any disease, (loss from) fire, death of a relative,  
 30 destruction of property, or extinction of wealth, to himself personally one should infer from it his defeat' To himself,

PAGE 117 personally, is not along with a group. The word 'property (*artha*) here, is intended to indicate sons and

the like, otherwise, the word 'wealth' (*dhana*), would be meaningless. Hence  
 35 also **Brhaspati** <sup>4</sup>. "If within a week, or within two weeks, one to whom

1 मया Dr Jolly's edition, it appears reads मया as he translates 'I have' and does not mention intentionally

2 Ch XIV. 4-5

3 Ch I. 330

4 Ch X 24

1 a calamity is produced in regard to a son, wife, or property also, such a one should be regarded as innocent, and there is no doubt (about this)" By Pitāmaha has been mentioned other intervals also "Either within three nights, or seven nights, or even two weeks also, one to whom any calamity is seen (to have happened), such a man is certainly a sinner', 5  
'To whom' i.e. to the accused

The Same Author says that the guilt as a sinner is inferable not only from any untoward happening to the accused himself personally, but even from an untoward happening to his kith and kin also "Not only of himself only, but if to (any of) all his kindred occur a (calamity in the form of a) disease fire, or the death of a kindred that even is its indication" 10 The meaning is that, it is not that if that i.e. the disease or such other untoward happening occur only to him who has swallowed the Kosa, but on the other hand, if it happens to any one among all his kindred, then also 15

By Manu<sup>1</sup> also another interval has been stated "He, moreover, to whom no misfortune happens speedily, must be held to be innocent in regard to the oaths" 'Misfortune,' *Ārūh*, i.e. the aforesaid disease etc; 'speedily,' i.e. quickly, in short, in one night and the like This interval, moreover, is in regard to oaths on veracity etc which are decisive of petty causes the notion about innocence (to be determined) within a short time being appropriate in such a case only, and since these have been mentioned in regard to veracity and the like oaths The intervals of three nights and the like, however, having a reference to Kosa have been mentioned in regard to Kosa 25

There also, it should be understood that the interval of three nights has a reference to an offence of a smaller degree than (where) the rice (is administered), while that with an interval of seven nights, however, to one of less degree than that for a thing in regard to a *Mahābhuyoga* (serious charge), for one for an interval of two weeks is in reference to a *Mahābhuyoga*, while that for an interval of three weeks however, in regard to Kosa, dealt with in the text<sup>2</sup> 'For the loss of twenty and ten, the drinking of the Kosa has been ordained' 30

Having regard to appropriateness however, in all cases, if an untowardness is seen at a time after the stated interval, the person who has (been alleged to have) committed the crime should not be subjected 35

1 Ch VIII 116

2 Of Katyāyana See above pp 195 ll 31-32



to a process of purgation, as the interval is quite enough and because of the possibility of other causes leading to (the occurrence of) disease etc.

Hence also Narada <sup>1</sup> 'After (the lapse of) two weeks if any (event of) great calamity happen to befall any one such a one must not again be subjected to a charge by the wise as the appointed interval has been passed. The expression 'Two weeks' is (only) an indication (by implication) of the intervals stated before, and by the mention of the expression 'by reason of the appointed interval having been passed' it would be equally so even if it occurred during any other interval.

Thus ends the Law about Kośa

### Now the Rice Ordeal — *Tandulavidhi*

There Pitamaba Now I proclaim the rule regarding the grains of rice which have been ordained to be eaten. The rice (ordeal) should be administered in a case of larceny but on no other occasion whatsoever, this is certain. 'Other : e in cases of adultery with women and similar other cases not involving a money claim.

In cases of disputes involving money however, even in cases other than larceny the rice should be administered as Kalyāṇa has stated. For a half of that, the rice, and there would be the incongruity of a contradiction with the text 'Where a donation is denied' with which the passage begins. Therefore the use of the word larceny should be taken to indicate disputes relating to property.

Here the performance is (to last) for two days. There, the Same author states the acts to be performed on the first day. One who has

purified himself should wash the (grains of) white rice, paddy and not of any other and after placing (these) in an earthen pot in front of the Sun after having mixed them with water used for the bath, one should cause it to remain there itself, having first performed the invocation etc. at night according to the rules. The meaning is that the Chief Judge having washed himself pure at night, having placed the rice in front of the sun, not at a long distance, and after having performed in entirety the preliminaries common to all ordeals, such as commencing with the invocation of Dharma and ending with the oblations, and having washed the rice as so placed with the water of the sunwash, should place it there only until the morning time.

In the morning also what is to be performed, that also has been pointed out by the Same Author 'In the morning should (it) be given three times to the party with his face towards the east' The meaning is that the rice deposited at night should be given three times to the accused

The Same Author also points out the part to be performed by the accused in the form of a repetition "To one who is seated with his face turned towards the east, who has fasted, and who has bathed with the parchment placed on his head, having caused him to chew the rice, he should be asked to spit thrice on a leaf' The meaning is that commencing with the sitting with the face towards the east, and ending with the spitting, all these should be caused by the Chief Judge and performed by the accused

In regard to the leaf also a special rule has been stated by the Same Author — "Of the *bhūrja* (birch tree) only, and not of any other, if (that be) not available (then) of the *pippala* "

This morning performance, moreover, such as chewing etc should be done at the Sun's eclipse, so says *Bṛhaspati* 'After having observed a fast at the Sun's eclipse, after having purified oneself (by a bath), one should chew the rice

Likewise, the signs of innocence also have been stated by the Same Author 'He is (regarded as) innocent, if the spit is white, moreover, if (it be) mixed with blood, he is guilty The meaning of the word 'moreover, *cha*, is that not only for a mixed red is he (regarded as) 'guilty', but that even upon any other sign also Hence also *Pitāmaha* He whose blood is seen (to issue forth) or whose chin or palate sink, or the limbs shake, one should pronounce him to be guilty

Thus ends the Law regarding the Rice (Ordeal)

Now the Law about the heated *Masha* — *Taptamāśaviddhā*

There *Pitāmaha* I shall now state the auspicious rule of procedure for the lifting up of the heated *māśa* One should cause a pot made of iron or of copper of sixteen *āṅgulas*, or a *mandala* or a circle dug into the earth of the measure of four *āṅgulas* 'Man lala' is a circular mandala 1 e in short a circle Having filled up a pot of this sort with clarified butter or oil or with the cow's ghee only, and having established a *Laukika* fire at the ordeal spot, there one should heat For says the same Author also 'One should fill it with clarified butter or oil weighing twenty *palas*, and taking up cow's ghee, one who is duly purified should heat it in the fire' By reason of the use of the word *idā* 'or here some hold that a combination of clarified butter oil, and cow's ghee is intended, but that

not correct; the rule of option being only in regard to paddy or barley on the authority of the absolute rule of the Śruti. Therefore, one should pour into the pot either clarified butter and oil, or cow's ghee of the weight of twenty *palas*, and heat it. According to both the alternatives also, while the heating is proceeding one should observe the general procedure common to all the ordeals such as commencing with the invocation of Dharma and ending with the placing of the leaf on the head.

Thereafter, in regard to the two alternatives there is no difference in the methods. There first the same Author states the difference as regards the alternative of clarified butter and oil. 'When it is heated well, he should throw a gold *māṣa* into it. He should then lift up the heated *māṣa* with the thumb and finger joined together, he who does not shake his fingers, or on whom no boil is produced, is deemed under the law to be pure, since his fingers were unaffected.' The *māṣa* here is the gold one, one sixteenth part of a *karṣa*, intended to exclude the silver *māṣa* of the measure of two *krānālas*, as by reason of its smallness, it would be difficult to be caught up. Therefore the meaning is that one should throw either a gold or a copper *māṣa*. 'Into it' i.e. in the clarified butter and oil, 'thumb and finger joined together' i.e. the meaning is, by the joining together of the thumb, the forefinger and the middle finger.

In regard to the alternative of heating of the cow's ghee also, the Same Writer states a particular rule. "He should throw into it a polished coin bearing an impression, and made

either of gold, silver, copper, or iron. The pot (which had been heated to the boiling point) in which waves and circles are rolling and rising up, and which does not admit of being touched even at the nail points (of the fingers), he should test (it) by means of a green leaf (having been dipped into it), and thus producing a crisping sound, and then he should address it with the following *mantra*. 'O clarified butter, thou art the purest of all things, thou art the ambrosia at a sacrifice. Burn this man, O purifier, if he is guilty, and be as cold as ice if he be innocent.' He should (then) cause the coin lying in the clarified butter to be caught by the (accused) person who had observed a fast, had bathed and had wet clothes on. The umpires then should examine the forefinger. He in whom no boils are seen, is to be considered innocent, otherwise, he is guilty.'

Here, the lifting up of the marked coin is by the first finger only, as the inspection has been ordained to be of that finger.

Thus ends the Rule about the Heated *Māṣa*

## Now the Rule about Ploughshare —Phalavidhāh

There Brhaspati<sup>1</sup> "Iron in weight twelve *palas* and formed (in shape) is what is called a ploughshare. It should be eight *angulas* long by four *angulas* broad' Having (made) in this manner, having duly thrown into the fire prepared and established at the place of the ordeal and after the entire ceremonial common to all the ordeals had been gone into, such as commencing with the invocation of the Dharma and ending with the placing of the leaf upon the head of the accused one should beat it well. After beating it well, however, the Same Author<sup>2</sup> states the procedure next (to be followed) "(The Ploughshare) having been made red hot in fire the thief should be made to lick it once with his tongue. If he is not burnt, he obtains acquittal, otherwise however, he loses his cause"

The use of the word 'thief' is indicative by implication, of the accused.

Thus ends the rule about the Ploughshare

## Now the Rule about Dharma —Dharmajavidhāh

There Pitāmaba 'Now I shall describe the test by Dharma and Adharma (The images of) Dharma should be caused to be made of silver, and of Adharma of lead and iron, or one should paint (the images of) Dharma and Adharma upon a birch leaf or upon a cloth of white and black colour respectively. Having duly sprinkled with the five bovine products, one should offer worship with sandal paste and flowers, the Dharma should have a white flower, and the Adharma shall hold a flower of black colour. Having thus established and besmeared (these) one should place the two by two balls. The two balls should be prepared either of cowdung or of clay, and should be placed nearby unobserved upon an earthen pot which had no cracks at a pure spot which had been washed and duly smeared, in the presence of the Gods and the Brahmanas. Thereafter, one should invoke, as before, the Gods and the guardians of the world, and preceded by the invocation of the Dharma one should write the affirmation thus 'If I am absolutely free from sin may (the image of) Dharma come into my hand, and thereafter immediately the accused should take hold of one if Dharma is taken he is (declared) innocent, while if Adharma (is taken) he is (considered to be) defeated in this manner has been briefly described the test by Dharma and Adharma"

'Lead and Iron, i e prepared of lead and iron combined together Some describe as prepared of lead and prepared of iron, 'One should place the two by two balls', i e the meaning is, that one should deposit these two in the intervening space between two balls

5 The balls should be prepared with proper measurements as Brhaspati<sup>1</sup> has stated "After having made of equal size the two should be placed unobserved on a new pot" 'If I am absolutely free from sin, may Dharma come into my hand', this Mantra, the accused should pronounce, as is indicated by the pronoun 'I' in the mantra Everything else is clear in meaning

10 Thus ends the rule about Dharma Process

The Chapter on Ordeals also is finished The part about evidence also is finished.

PAGE 120\* FINAL DECISION and similar procedure Nūnayādi Kṛtyam

15 There the Sangrahakāra 'The evidence established in support of one's own case and in accordance with the modes stated, after having been duly examined by the king and the members of the Court also, the success and defeat should be determined He who establishes his point by means of evidence, in the form of any of the varieties specified, (the point) co-eval with the recitals in the plaint, such a one is declared to be (the) successful (litigant) One who does not establish, or exhibits quite a contrary case, or one who has been found to be guilty of a vitiated cause, such a one, moreover, is (declared to be) defeated"

20 In this connection Vyāsa "The king however should punish one who has been defeated, and set about doing honour to the successful (party) even if not defeated, (but) those who are obstructive to the Vedas and Śāstras should be subjected to a penalty" The honouring should be done by (offering) sandal paste flowers, cloth etc, as the Same Author has stated "The honouring of the successful (party) is stated to be by means of sandal paste flowers clothes, and the like"

30 After the starting of the honouring states Kātyāyana "The (successful) party should be duly invested with the matter established, after being in due form felicitated, while the king should offer to him a document in his own hand" Narada "The property which was placed before the Court, whether movable or immovable, should afterwards be caused to be delivered with the increase to the successful party along with a document"

'Document', i.e. the document of success. To that effect also Brhaspati<sup>1</sup>  
 "When a king passes to the successful party a document containing the  
 evidence of the first party, and of the respondent, and concluding with the  
 final decision, that document is called a deed of success." Whatever is  
 to be entered in a deed of success all that has been stated in the rules about  
 documents, and that should be followed here

Yājñavalkya<sup>2</sup> states a special rule in regard to certain points (arising)  
 in the text<sup>3</sup> 'Should be duly invested with the matter established'  
 "Where the defendant sets up a denial, and it is not confined to one only  
 of the many particulars written in the plaint severally, and the claim is  
 (afterwards) proved in one particular, he should be compelled by the king  
 to pay the entire claim, he (the plaintiff) should not, however, be allowed  
 to recover (from the defendant) what has not been alleged in the plaint."  
 The meaning of this. Where a defendant gives a denial regarding coins,  
 clothes, ornaments, and many other things, which were set out at the time  
 of the plaint, and after the whole was affirmed on oath, gives an answer  
 'This is false, and has been proved on the strength of evidence in  
 regard to one point and has been made to admit thus. 'True I had taken  
 this,' such a one should be compelled by the king to pay to the plaintiff  
 the whole of the claim set out in the plaint

Thus it is not that the point set out in the plaint and afterwards  
 iterated by the plaintiff should not be taken by the king as it was to be  
 given. This is what comes to have been stated. After discarding all  
 circumvention the king should decide disputes in accordance with actual  
 facts. What has been stated in this text<sup>4</sup> should be resorted to in a case  
 of this kind, as the fraudulent intent is proved in this case

if a claim has been established as to one portion (only) (there) the entire claim as alleged must be paid "

(It may be said) Indeed, if ancient texts were to be interpreted as stated before, they would not be decisive on a point of law, for (in that case) their decisive character would be stated to be in pursuit of circumvention "

The answer is Yes, true still there is no fault, as in regard to the matters stated before a decision at law may affect adversely a decision according to Dharma Hence

10 also Brhaspati<sup>1</sup> "Where a decision is given exclusively in pursuance of the Śiṣṭra, it should be regarded as a decision at law, but Dharma (law) is ignored there " 'Where' PAGE 121\*  
i. e. such as in cases stated before and the like

15 As for what has been stated by Kātyāyana " Even if a complaint be in regard to several points (still) as much as the creditor can properly substantiate by (means of) witnesses, so much property shall he get", that has a reference (to a case) where the portion which is vitiated is not entirely non-existent, for here (also) as is the case with ancient texts the defendant does not deny everything as vitiated in entirety

20 Some, however, say that this text has a reference to (the case of) a debt incurred by the father etc and (demanded) to be paid by the son and others by saying that by reason of the fact that a threefold answer of denial, 'I do not know' is possible only in such a case, that is not correct, for, even in a dispute regarding a debt incurred by oneself, a threefold answer due to forgetfulness &c is possible In a dispute regarding a debt incurred  
25 by the father etc for a son stating an answer of denial, viz This is false', even as much as would be regarded as known as would be established

If, however, it be said that in the case of sons and the like, an answer such as 'this is false' itself is not possible, the answer is do not say so ,  
30 for that is possible in the case of those who were adolescent at the time when the loan was taken, as also in the case of those who were not major under the statement of a mother etc

Now, if it be said that the text referring to that portion only as is established, is applicable (only) to the sons etc who declare an answer of denial by saying 'I do not know' then confine its applicability only to  
35 those who propound a three-fold answer 'I do not know' etc, why in reference to the son etc ?

Again if it be said that having regard to the text<sup>1</sup> "A debt should be paid by the sons and grandsons, in case of a denial, when established by witnesses" it has a reference to (a proceeding against) the sons etc, then it would have a reference to the sons who say 'This is false' as the text says 'in case of a denial, when established by evidence'

Others, however, explain the adjustment in another way. The text, laying down that the entire claim should be compelled to be paid, is applicable where the claimant establishes his claim in regard to one only out of the many affirmed (by him), only to a case, where a party sets up a denial and (further) boastfully declared that 'even if the plaintiff establishes one of the several claims affirmed by him I shall pay up all the claims', but without that however it applies to such only as may have been established

This also is not proper. Since the text<sup>2</sup> 'Where the defendant sets up a denial, and it is not confined to one only' has been stated without any particularisation. Nor, moreover, would it be proper to say that as this text has a reference prominently to circumvention, the reference to the emphatic assertion is only in confirmatory establishment of that test, because as the conclusive decision of the trial after taking up the circumvention in the form of a universal denial, the taking up of the element of circumvention is established in regard to so much portion of the text. If the compulsory payment of the entire claim be by the force of the complaint itself the text<sup>3</sup> 'sets up a denial' &c is only repetitionary and the two texts also may (be regarded as) of the same import

Nor, however would it be proper to say that this is resorted to in this way as a modification of the text of Kātyāyana viz "Even in a complaint covering several counts so much as the creditor shall establish", as its opposition is taken away by a straight way. Thus enough of too much elaboration of other opinions and their refutation

The mode of compelling payment, however, has been pointed out by Kātyāyana. "The king should bring about repayment by a Brāhmana by conciliation only while by others in accordance with the ways of the country, he should compel the wicked by force to pay, a coparcener or a friend also, he should cause to pay by circumvention only".

Not only should the king compel rendition to the owner, but he should exact a fine for himself also. So says Nārada<sup>4</sup> "A debtor, who however, although rich does not offer to pay out, he shall be compelled by



the King to pay after taking a twentieth part (for himself)" The meaning is that as much as may come to be the twentieth part of the amount to be paid, so much amount should be taken from the debtor. This also has a reference where the debtor has admitted.

5 To the case however, of a debtor who had not admitted, Vishnu<sup>1</sup> says "If a creditor approaches the King, the debtor against whom the claim has been established by him, should pay to the King a tenth part of the amount as penalty, the creditor also who has secured the amount should pay the twentieth portion" The payment is by way of a fee for

10 ' this amount being secured and not as a penalty as he was not at fault. PAGE 122

When a debtor approaches the King then says Manu<sup>2</sup> The (debtor) who complains to the King that his creditor recovers (the debt) independently (of the court), shall be compelled by the King to pay (to him as a fine) one quarter (of the sum), and to his (creditor) the money (due)" The meaning is, that a debtor being a favourite of the King, with the intention of causing an obstruction by his order, complains to the King about a creditor who was making recovery of the loaned amount by a demand independently by himself : & makes a complaint that 'he is troubling me', such a one should be compelled by the King to pay as a penalty, an amount equal to a fourth part (of the sum).

As for what has been stated by the Same Author<sup>3</sup> — "As much of the amount as one (i.e. the defendant) falsely denies, as also as much as one (i.e. the plaintiff) falsely declares, these two (thereby) offending against justice, should be compelled by the King to pay double the amount as penalty" that has a reference to a debtor and a creditor where money had been recovered, as it has been stated in the commentary<sup>4</sup> on it, since the expression used is 'offending against justice' *adharmayāgrahanāt*.

As to what has been stated by Yājñavalkya<sup>5</sup> "When upon a denial a claim is proved (against the defendant) he should pay the amount (to the plaintiff), and also an equal amount to the King" that has a reference to a debtor from whom recovery has been made but who has not money enough for the amount pronounced as penalty, otherwise a contradiction with the aforesaid texts of Manu and Vishnu would be unavoidable.

1 Ch II 20-21

2 Ch VIII 170

3 Ch. VIII 59

4 Of Medhātithi See p 587 l 27 अथमहमद्वयमिति निमित्तमहमद्वयमिति इति इति इति

5 Book II 11

For one, however, who files a false complaint, the penalty is not equal to the amount (only), even if he has not sufficient money, as says the Same Author <sup>1</sup> "One setting up a false claim should bear double the amount claimed" 'Claimed' i e double the amount of the claim 'Should bear i e should pay to the King In the absence of that, however, the alternative course stated in the text <sup>2</sup> "Should redeem himself from indebtedness by labour", should be followed

As for what has been stated by Nārada viz 'One must not lodge a false complaint, a sin attaches to a false complainant, the penalty which has been stated there, the same shall fall upon the complainant', that has a reference where a penalty has not been stated for each title (at law), as it is (a rule of) general law Therefore it should be understood that the penalty which has been declared by Vishnu for a misconducting claimant in a plea of denial the same should be stated for a well behaving party in regard a false complaint

Accordingly "After a denial, when the disputant himself admits (the claim), that should be regarded as an admission the penalty for that has been stated to be half", in this text the penalty which has been stated by Vyāsa that itself should be understood to be also in the case of a false complaint even when he himself admits it as such

As for what has been stated by Manu <sup>3</sup> "Where however, a debt is denied by one, but is properly proved by (good) evidence, he (i e the king) shall order the amount to be paid to the creditor and a small fine according to (his) capacity', that has been explained in its commentary as having a reference to a well conducted debtor unable to pay to the extent of a tenth portion by way of penalty By saying 'by evidence' the author points out that in a trial of two parts (only), merely the amount should (be ordered to) be paid, and not a penalty, there being an absence of a denial or a false charge in such a case

In the same way also, in a trial with four parts also, where the charge is founded on suspicion, or the answer pleads ignorance or the like circumstances, by reason of (the fact that there is) an absence of a false averment or a denial, an absence of penalty should be inferred

As for what is stated in another Smṛiti "But if it be in the first, a quarter of a fine, in the second a half, in the third, less by a quarter, (and) if in the fourth part he incurs the entire penalty that has been explained

in detail by the revered *Viśvarūpa* as unauthoritative by reason of its being inconsistent. Hence, the penalty (incurred) by reason of a denial or a false accusation should be taken only in a trial with four parts where there exists a good cause as its reason. In such a case in regard to a suit involving the payment of a debt as the subject matter, the subject of penalty has been pointed out, in regard however, to suits relating to deposits and the like, special kinds of penalty will be stated on the respective occasions.

- As for what has been stated by *Kātyāyana* "He should ask the (person found to be) innocent to pay half of a hundred, the guilty shall (have to) pay a penalty", that is in regard to a person who has been found to be innocent or guilty in any particular (kind of) ordeal, since immediately thereafter, the Same Author says. In an ordeal by poison, water, fire, balance, kosa as also rice, and in the ordeal of a heated *Misha*, he (the king) should prescribe a penalty in respective order viz, a thousand, six hundred, five hundred likewise, four, three, two and one (hundred) also, a smaller amount in the case of (ordeals of) small (importance).

- Moreover, this penalty attached to an ordeal is in addition to the penalty consequent upon a denial or a false accusation or of either, on account of the combination of causes. A wager, however, is added to the penalty prescribed in the *Sāstra*, so says *Yājñavalkya* <sup>1</sup> 'If a dispute is accompanied by a wager then in such a case, the defeated party should be made to pay a penalty, and the amount of his wager (to the king) and also the amount (in dispute) to the creditor. *Narada* <sup>2</sup> also 'In a law suit attended by a wager, he of the two who is defeated must pay (the amount of) his wager, and a penalty when his defeat has been decided upon.' In this respect *Kātyāyana* <sup>3</sup> "In this manner occupying the seat of justice with evenness also and without taking side in the dispute the decision in the suits should be made with the *Brāhmanas*, and not otherwise. *Bṛhaspati* also 'By the king should be made with effort the investigation

1 Book II 18

2 Intr I 5 According to *Asahaya* the wager must not be laid until the answer has been received. It may be laid by either party. It is not clear to whom the sum stated is to be paid. According to Burmese law 10% of the sum staked should go to the Judge and to the pleader and the remainder to the victorious party, See *Richardson & Dhamma* p 73 (Jolly)

3 V 1 नपतेन विपक्षे,

of a doubtful matter three in such a case, are evaled, the loss is caused to one, the successful party obtains wealth, and honour, the defeated party, penalty and restraint, the King acquires success donation, and discipline, and other members of the court acquire religious merit Narada<sup>1</sup> also 'Thus a King constantly trying lawsuits with attention will acquire widespread and brilliant renown in this life, and the abode of Indra after death' Brihaspati<sup>2</sup> also 'The King thus acting according to the dictates of *Sutra* in deciding suits spreads his fame far and wide in this world, and becomes a minister of the great Indra By reaching the decision in a cause according to the evidence of witnesses, documents and inferential reasoning the King spreads his fame far and wide in this world and reaches the abode of *Bradhna* Manu<sup>3</sup> also 'By subduing, however the feelings of love and anger, (the King) who decides a cause according to law, (the hearts of) his subjects turn towards him as the rivers (do) to the ocean That King of men, however, who in his folly decides suits unjustly in no time would the enemies of that evil person bring him under subjugation'

Thus is the *Smṛichandrika* the final decision etc

Now some texts relating to the subject of Penalty are being stated *Dandavishayani*

There Narada<sup>4</sup> Corporal punishment and fine, thus punishment is pronounced to be two-fold Corporal punishment begins with (bodily) beating and the like and ends with death (sentence) The (punishment of) fine begins with a *Ākṣam* ending with 100's entire property' Here, the varieties of corporal punishment it is possible to enumerate, not the kinds of punishment of fine as says the *Sam-* Author Corporal punishment has again been declared to be of ten varieties, while punishments of fine are of various kinds The expression of ten varieties is not intended as restrictive of the number, since corporal punishments of various kinds are to be stated hereafter

For, of nine varieties has been pointed out to be the corporal punishment by Manu 'Manu<sup>5</sup>, the son of the self-existent has named ten places (for) punishment, (these are) the organ the belly the tongue, the two hands and fifthly the two feet the eye, the nose,

the two ens the property and the body likewise  
 PAGE 124\* also". 'The organ', i.e. the male and the female  
 genitive organ, the restraint of that i.e. for

5 having a prohibited sexual intercourse, in the case of theft, however, by a  
 prohibition of eating and the like the restraint of the stomach, in the case  
 of abuse, (restraint) of the tongue, in the case of assault of the hands,  
 for licking etc, of the feet, for prying into a secreted thing, the eyes,  
 for inhaling the fragrance of the smear on the breast of another's wife, of  
 the nose, for listening to the king's (secret) counsel, of the ears For  
 10 offering a bribe of money and the like, by a prohibition of transactions,  
 in the case of a *mahâpâtaka* and the like, of the body Thus restraining  
 of the organ etc should be made where a particular punishment has not  
 been stated for the Kshatriya, Vaisya, and Sâdhas, in cases of prohibited  
 intercourse, theft etc and like offences, as in the text <sup>1</sup> "These may be  
 15 (ordered) in the cases of (the members of) the three Varnas, a Brâhmana  
 shall go unhurt', these having been generally stated in regard to the  
 Kshatriya and the others 'A Brâhmana unhurt i.e. the meaning is that a  
 Brâhmana not punished in regard to the places of punishment as  
 stated before

20 By saying that 'he shall go', the Author points out that the negation of  
 punishment in the aforesaid parts is only in regard to the Brâhmana who  
 goes to another country after he was expelled, and not in the case of all  
 Brâhmanas whatsoever Hence also has been stated by the Same Author <sup>2</sup>  
 in the form of a special procedure in regard to expulsion "He should  
 25 never, on any account, slay a Brâhmana, though he may have committed  
 all (kinds of) sins, he should banish him from the kingdom, leaving all  
 his property (to him), and (his body) unhurt"

For one, however, for whom there is no (punishment of) banishment,  
 the punishment shall be just as in the case of the Kshatriyas and  
 30 the others For, the Same Author <sup>3</sup> also says "On the (members of the)  
 four *varnas* who do not perform an expiation, he (i.e. the King) should  
 inflict corporal punishment and fines in accordance with law"

As for what has been stated by Gautama <sup>4</sup> "No corporal punishment  
 for a Brâhmana", that is intended as a prohibition against a death  
 35 (sentence), or destruction of an organ, and not also against the restraint  
 of an organ If it were so, there would be a contradiction with the afore-

1 Ch VIII 124

2 Ch VIII 360

3 Ch IX 236

4 Ch XII 46

stated text, hence also has it been particularised by Brhaspati<sup>1</sup> "Even if convicted of a *Mahâpâtaka* a Brāhmana shall not be sentenced to death' Hārta also - "Wise men do not prescribe the destruction of a limb (in the case) of a Brāhmana"

In this way therefore it should be construed that the corporal punishment for a Vipra shall only be in the form of the restraint of an organ, and not one involving death (sentence) Hence also 5  
Āpastamba<sup>2</sup> "For a Brāhmana, the obstruction of the eyesight" The obstruction of the eyes is to be done by tying (a cloth), and not by uprooting the receptacle as destruction of a limb has been prohibited 10

As for what has been stated by Śankha 'For the members of the three *varnas*, deprivation of property, sentence of death and imprisonment banishment and branding with a mark for a Brāhmana,' that is in regard to a poor Brāhmana So also in regard to a Brāhmana Gautama<sup>3</sup> 15  
'Depriving him of his functional duty, proclaiming his crime, banishment, and branding, for one not in his element' Not in his element : *e* moneyless This is in regard to the (offences characterised as the) most heinous crimes

In regard to the denial of a debt liability and the like however, says 20  
Manu<sup>4</sup> 'But a Kshatriya a Vaisya, and a Sūdia, who are unable to pay a fine shall discharge the debt by labour a Vipra shall redeem slowly and slowly (by instalments)' In the case of those who are unable to do labour work says Kātyāyana "Upon knowing that the debtor is unable to return the debt the king shall make him do work (for the creditor) by making him over to him, if he is unable (to do work) he should be 25  
entered in the prison house, excepting a Brāhmana' Manu<sup>5</sup> also 'On women, infants, men with disordered mind, the poor, and the sick, the king shall inflict punishment with a whip, a cane or a rope and the like'

In this way, moreover, (corporal punishments) should be known to be five viz in the form of fettering branding compelling work to be done, 30  
entering in a prison house and beating Therefore, it should be borne in mind that the statement The corporal (punishment) is

PAGE 125\* tenfold' is indicative (only), and not restrictive The statement, that 'Punishment, however, has been stated to be of two varieties' is also indicative, as other varieties have been 35

1 Ch XVII 4

2 Dh S II 10, 17

3 Ch XII 47

4 Ch IX 220

5 Ch IX, 230

stated Accordingly <sup>1</sup>, shaving of the head banishment from the town, branding on the forehead with a mark of the crime of which he was convicted and expulsion after parading on an ass shall be his punishments <sup>2</sup> 'His case of a Brahmana as Brahmana is under discussion here

- 5 In this connection Yajñavalkya <sup>3</sup> states the punishment of shaving in the place of killing. 'For a Brahmana not the capital punishment (but) shaving expulsion from the town branding on the forehead with the mark of the crime of which he was convicted, and parading on a donkey also

- Thus, for a Kshatriya and the others capital punishments only, and shaving, as it has not been stated there as a substitute Hence also  
10 Manu <sup>4</sup> Shaving of the head has been ordained for a Brahmana as a (substitute for) capital punishment but others may suffer capital punishment' <sup>5</sup> i.e. the implication is in regard to the most heinous offences To that effect also Narada <sup>6</sup> 'Capital punishment, confiscation of the entire  
15 property, banishment from the town, and branding, as well as amputation of the offending limb, are (declared to be) the punishments for a Śūdra of the highest degree This law of punishment has been declared in the Smritis for all (men), excepting a capital punishment for a Brahmana, a Brahmana must not be sentenced to be killed The expression 'excepting capital  
20 punishment' is implicative of the amputation for a Vipra 'The wise never declare the destruction of a limb for a Vipra by reason of his austerities as also on account of sacrifices a Brahmana is always respected, vide this text of Harita

- Manu <sup>7</sup>, however, states a reason for excluding the capital punishment :  
25 'No greater crime is known anywhere than slaying a Brahmana a king, therefore must not even conceive in his mind the thought of killing him' Therefore, although convicted of a Mahāpātaka of the most serious crime, a Brahmana must not be killed so says Brihaspati <sup>8</sup> 'A Brahmana although convicted of Mahāpātaka shall not suffer capital punishment'

- What then? Anticipating this question immediately after has been stated by the Same Author <sup>9</sup> 'The king may banish him, and cause him to be branded and shaved' The banishment here is from the country, and not from the town (only) As says Baudhāyana <sup>10</sup> "After having caused to be impressed with heated iron on his forehead the mark of the crime  
3 banishment from the realm i.e. he is to be banished from the country

<sup>1</sup> of Narada; Cf. XIV 9

<sup>2</sup> Not so; in Yajñavalkya but see Narada Ch XIV 10

<sup>3</sup> Ch VIII 379

<sup>4</sup> Ch XIV 8-9

<sup>5</sup> Ch VIII 381

<sup>6</sup> Ch XXVII 11

<sup>7</sup> Ch XXVII 11 (2)

<sup>8</sup> Dh S I 10, 18, 19

In regard to the branding, however, a special rule has been stated by Nārada<sup>1</sup>. "For violating a guru's bed the mark of the female organ shall be impressed, for drinking Surā the sign of a tavern, for theft, however, a dog's foot should be impressed, and for killing a Brāhmana, a headless trunk".

This branding, moreover, should not be done in the case of the Kshatriyas and the others, as says Uśanāb<sup>2</sup>. "In cases of crimes of four varieties by a Brāhmana the branding has been ordained, viz for violating the guru's bed, drinking Surā theft, and killing a Brāhmana, in the case of (the members of) the other *varnas*, however, branding should not be caused in such cases"

What then should be the punishment? Anticipating this question, says Brhaspati<sup>3</sup>. "Those who are convicted of a very serious crime, the king should sentence with the capital punishment"

When, however, it is not possible to restrain persons guilty of serious crime by inflicting a capital punishment, then states Manu<sup>4</sup>. "But when he cannot bring these under restraint by a capital punishment even, then he may utilise all these four in his case" What are these four? Anticipating this says Yājñavalkya<sup>5</sup>. "A verbal admonition, a reproof, then the fine, and after that the corporal punishment, these may be utilised separately or together, according to the nature of the crime".

PAGE 126\* 'Abuse', containing rough oaths, 'a reproof', punishment with (the exclamation) *Dhuk*, i. e. administering a reproof with the exclamation 'Fie'

Manu<sup>6</sup> states the order of the administration of all these "He should first begin by gentle admonition orally, thereafter by (harsh) reproof, the third, however, a fine and after that, the corporal punishment"

In regard to the administering of these separately Brhaspati<sup>7</sup> states a rule of adjustment thus "For a petty offence, admonition by word of mouth the punishment by a severe reproof in the case of a *Paria Sīhava*, for the muddling, however, the punishment of a fine, and for treason against the king, putting in fetters, banishment, or even capital punishment should be administered by one wishing for his own benefit, these severally or all together (should be administered) for one who has been found to have perpetrated a heinous sin"

1 See Manu Ch. IX 237

2 Ch. XXVII 7

3 Ch. VIII 130

4 Āchāra 36

5 Ch. VIII 129

6 Ch. XXVII 5-9



Likewise, by regard to the person also, an adjustment has been pointed out by the Same Author "In the case of friends and the like, one should administer a verbal admonition, the expression 'E' for the devout involved in disputes, one should punish other men with a monetary fine

- 5 By the expression 'and the like', are included respectable people, as has been stated by the Same Author 'The seniors, the family priests persons entitled to respect, one should punish with a verbal admonition only, while other men involved in disputes, one may punish with a severe reproof, or with a fine".

- 10 As for what has been stated by Sankha, viz 'Not punishable are the mother and the father, a student, and the family priest an ascetic, and a hermit, and also those who are endowed with (good) birth, actions, Vedic study, character, and conduct As also by Kātyāyana viz, "Of the Āchārya, of the father, of the mother, and similarly also of the
- 15 *bāndhavas* for an offence by these a punishment is certainly not ordained', that is intended as negating a corporal punishment or a fine, and not of any penalty whatsoever, as says Manu 'A father a teacher, a friend, a mother, a wife, a son or the family priest, is not punishable by the King if they swerve from their own duty', as also Brhaspati 'The
- 20 sacrificial priest the family priest, the ministers the sons relations, and kindred swerving from their duty should be punished, and should be banished if they commit treason against the King"

- As for the text Gautama 'He should be immuned by the king from six (kinds of punishment), he must not be killed nor imprisoned,
- 25 nor fined, nor exiled nor banished, nor censured', that has a reference 'to "One who is well versed in the Vedas, is acquainted with the ' world, the Vedas and ( their ) Angas, who is skilled in disputations, in historical studies and the Purānas, who looks to these (alone) and lives according to these, who has been sanctified by the forty sacraments who is devoutly
- 30 engaged in the threefold performances or in the six, and who is well trained in the duties (settled) under the agreement of local usage', Therefore, there is no contradiction with ancient texts

Katyāyana also has stated an immunity from punishment "When there is loss of life and an offence has been committed there shall be no

1 Ch XXVII 7

2 Ch VIII 13

3 Ch VIII 12 13

4 Gautama Dh 8 Ch VIII 4-11

5 ऐकविद्, एकः = the laws of the country and the like which may be learnt from the usage of the people

punishment at all, this law has been proclaimed by Bhṛgu" Nārada, however, states a punishment by a half of the prescribed penalty "After having committed an improper violent act, if a man feels repentance, or voluntarily confesses in a Court, for such a one half the penalty has been declared" Vyāsa also "When oppressed by a disease, if any one repent and declares 5  
 'never shall this be repeated by me', for such a one  
 PAGE 127\* he (i.e. the King) should declare half the penalty. In  
 this respect Gaṇḍama<sup>1</sup> states an alternative course "Or a  
 pardon (may be given) under the collective opinion of persons versed in the  
 Vedas" 'Pardon *Anuṇanam* : i.e. after declaring a punishment a discharge 10  
 Also the Same Author<sup>2</sup> says that a penalty may be imposed which may be  
 more or less than the prescribed punishment but which is sufficient to cause  
 trouble to the criminal "They declare that (the word) *danda* (chastisement)  
 is derived from chastening (*damana*), therefore he shall chasten who 15  
 are unchastened. The meaning is that so much punishment should  
 be awarded by as much as there would be brought about a cessation of the  
 particular trouble" So also Manu<sup>3</sup> "After fully acquainting himself with  
 the motive, the time, and the place, and after having considered the capacity  
 (of the criminal), and the crime, one should cause punishment to be inflicted  
 upon those who have incurred it Yajñavalkya<sup>4</sup> also "Having ascertained 20  
 the guilt, the place, and the time, as also the capacity, the age, the act, and  
 the means also, a punishment should be devised for those who have incurred  
 a penalty" There Manu<sup>5</sup> gives an illustration "Where any ordinary man  
 would be fined a *karṣapana*, there the King shall be fine one thousand,  
 this is the settled rule' 'Ordinary' : i.e. a poor man, "King" : i.e. one endowed 25  
 with affluence. Katyāyana also "An offence for which a *Sūdra* becomes  
 amenable to punishment under the law for the same (offence) a double, and  
 further double, shall fall upon the *Kṣatriya* and the *Brahmana* (respectively)  
 A *Sūdra* who has receded from asceticism and who intently practices  
*śapa* and *homa*, the King should punish that sinner with death, or should 30  
 punish him with a double fine. Brahspati also "A man who has incurred  
 a capital punishment should be compelled to pay a hundred *śuvarṇas*, for  
 an offence punishable with amputation of a limb a half (of a hundred),  
 if punishable with prongs, half of that. Beating, fettering, as also  
 disfiguring, this, indeed, is the punishment for a slave, not the punishment 35  
 of a free ; so says Brahspati' Nārada<sup>6</sup> also "Fines, beginning with a

1 Ch. XII. 62

4 Acharya 388

2 Ch. XI. 23

5 Ch. VIII. 236

3 Ch. VIII. 126

6 Appendix at p. 231

*kāṁsi* are declared to amount to no less than one *māha*, those fines are called amounting to no less than a *māsha* which amount to one *lār hī pana* at the most. Fines beginning with no less than a *lārshīpana*, are those amounting to no less than four *lār hīpanas*, or which begin with two, and end with eight, or begin with three and end with twelve, those, however, which are called *lārshāpanas* all these are quadruppled. The meaning of the words *lārshī* etc. have been pointed in the Chapter on Ordeals.

In this connection *Kātyāyana* 'Whatever fine has been determined with effort for any offence, it should be understood to be in (terms of) the *panas*, and its equivalent to be paid to the King, where one-fourth or half of a *māsha* has been prescribed, and where there is no particular mention in such a case a *māsha* should be taken (as prescribed). Where a fine has been expressed in (terms of) *māshas* then it should be understood to be in silver, also where it is expressed in *lār hīpanas*, the same fine should be determined as stated before."

The rules about their quantity, as also their technical terms have been pointed out by *Manu*.<sup>2</sup> "Two hundred and fifty *panas* are declared (to be) the first (or lower) amercement, five (hundred) should be known as the mean (middlemost), and one thousand as the highest." This technology is to be followed in the case of first offences. In the case, however, of a repetition of the offences say *Yājñavalkya*.<sup>3</sup> "One thousand and eighty *panas* is the highest amercement (*Uttama Sāhasa*), half of it is the middle (*Madhyama Sāhasa*), half of that (again) is declared to be the lowest (*Adhama*)."

Therefore, whenever a fine is spoken of as the highest amercement or the like, at all such places, should be taken the *lārshāpanas* of that quantity or their equivalent in *māshas* and the like.

The penalty detailed in this manner is conducive of delight to all the people, so says the Same Author.<sup>4</sup> "When applied according to the *Sūtras* it gladdens the whole world, the Devas the Asuras, and men, but otherwise it produces wrath (through) the world." Also the Same Author<sup>5</sup> declares the censure for one who inflicts a penalty in disregard of the *Sāstra*, and also the praise for one (who acts) otherwise. "The unrighteous punishment, destroys the heaven, fame, and all the world, a proper punishment, however, procures for the King heaven, glory and victory."

1 See also *Narada S B E* Vol. XXXIII pp 231-232, 57-60

2 Ch VIII 138

3 *Āchāra* 365

4 *Āchāra* 356

5 *Āchāra* 357

While those who have incurred a punishment become purged of their sins by that penalty, so says Narada<sup>1</sup> Those men who have received punishment from the king for offences committed by them proceed to heaven free from sin like virtuous men who had performed meritorious acts Kalyayana also "Purification is declared to be the remedy by those who know the principles of Śāstra penance and punishment, with these it is declared to be of two kinds 5

### Thus about Punishment

#### Now Retrial—Panarmayyah

There Narada<sup>2</sup> With women at night outside the town in the innermost part of a house, with enemies any transaction although completely entered into will be subject to a reconsideration The meaning is that any affair decided in regard to women, or with enemies or in secret, is liable to be investigated again on account of a possibility of ignorance or partiality 10 15

In the same manner any cause decided under duress, or under the influence of passion, hatred or the like should be upset, and a fresh investigation should be started To that effect also Yajñavalkya<sup>3</sup> Transactions brought about by force or fraud should be upset The import is, that thereafter another transaction should be started 20

So also similarly should be done in the case of an incapacity of (one of) the transacting parties so says the Same Author<sup>4</sup> A transaction entered into by a person (who is) intoxicated, or insane or afflicted with disease, or by one in distress or by a minor, or one frightened or the like, will not be upheld as also that entered into by one who has no connection 25

By the expression *Ādi*, and the like are included transactions directed by old men Hence Manu<sup>5</sup> 'An agreement entered into by an intoxicated person or one insane, or grievously disordered (in mind etc.) or one wholly dependant, or by an infant, or the aged, or such like others as also by one who had no connection is not valid 'Who had no connection,' i.e. who was unconnected with the plaintiff or the defendant. Narada<sup>6</sup> also That which is opposed to the interests of the town, or nation as also that which is prohibited by the king such a suit has been 30

1 Append 1 48

2 Book II 31

3 See S B E. Vol XXXIII quotations from Narada p. 237 § 10

4 Book II 32

5 Intr I 43

6 Ch. VIII. 163

declared by those who know the law to be inadmissible" Harita also "That which has been prohibited by the King, or which by itself is opposed to the interests of the citizens or of the whole kingdom, or of the constituent citizens of the state, others also which are opposed to the interests of a town or village, or to the interests of the people<sup>1</sup> in general, all such suits are declared to be inadmissible" Thus the conclusion to be deduced is that a transaction of this character even though completed and established should be upset, and another should be entered into

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Kātyāyana<sup>2</sup> states the distinction between a completed (*Tīrita*) and (that which is) established (*Anuvṛta*) 'A cause which was alleged to be untrue, (but) has been declared by the members of the Court to be true is (known as) *Tīrita*, Completed while that similarly so declared from the statement of witnesses is (known as) *Anuvṛta* Established' The meaning is that that which has been ascertained from the statements of witness is *Anuvṛta*

As for what has been stated by Manu<sup>3</sup> "Whenever and wherever a cause has been completed and executed also, one should regard that as (finally) established at law, and must not upset it, that should be regarded as a general rule merely, and having an application to those which have been acquiesced in or where there is no other cause for a revision

Hence also Brhaspati<sup>4</sup> states an exception to it, Even though a cause has been definitely decided by the *Kṛdas* or the like, but which does not create satisfaction, the King may set it on again, if after consideration, he finds it to be wrongly decided' The meaning is that if a party considers a trial to have been concluded illegally, even though it was decided by authorized persons then a retrial should be held

In such a case, if it is proved that it was wrongly decided, Narada<sup>5</sup> states a penalty for those who decided the former cause 'Where however, a cause has been (proved to have been) wrongly decided, the members of the Court shall be awarded a fine, for indeed, without punishment no one sticks to a proper path<sup>6</sup>' This

1 महान्न वेधिका Dr Jolly translates opposed to the interest of eminent persons'

2 Cited by Nandana on Manu IX 233 मोहि and अग्रित् Modhātithi and Kullūka interpret these as cases properly decided by the King's Courts, while Sarvajña Narāyaṇa puts it as 'orders passed by the former kings' Nandana cites Kātyāyana and also follows it See also Asahaya on Narada Intr I 65 (p 228 & E Vol XXXIII)

3 Ch IX 233

4 Ch VI 6

5 Intr I 66

6 न हि ज्ञानं विना कदाचन धर्ममधीनमिति Dr Jolly translates Because nobody certainly can act as a judge without incurring the risk of being punished (eventually).

penalty for the members of the Court only, should be understood to be where the successful party had not been instrumental in the (making of the) decision, if he was instrumental, then in that case a penalty should be for him also. So also Brhaspati <sup>1</sup> 'After having considered the matter in common with many Brâhmanas well versed in the Sâstra, he should punish along with the successful party, the members of the court who had been found (to be) guilty' The infliction of a penalty along with the successful party will be only in the manner stated in the chapter on the penalty for the members of the Court so says Yajñavalkya <sup>2</sup> "Having, however, decided again those causes which were wrongly decided, the members of the Court along with the (then) successful party, should be fined double the amount in dispute" 'Wrongly decided', i.e. owing to the fault of the members of the Court along with the successful party

Where, however, the wrong decision was owing to the fault of the witnesses, then the witnesses only should be punished in accordance with the rules stated in the chapter on the punishment for witnesses, not the successful party, not even the members of the Court, but when, moreover, through the fault of the successful party and the witnesses, then these only should be punished and not the members of the Court, this is the import

In this manner a retrial on account only of dissatisfaction should be ordered when the decision under consideration is (only) a semblance <sup>3</sup> of justice When the decision was properly given then says Narada <sup>4</sup> "If a man is of opinion that the suit had been decided and execution ordered in a way contrary to justice he may have the cause tried once more provided he should pay twice the amount as a fine Contrary to justice' i.e. decided in contradiction of the principles of law and justice meaning that the party audaciously thinks so although it was properly decided

Here, by reason of the improbability of a cause being decided wrongly, another decision in the fresh trial also should have a fine undertaken by the party defeated in the former suit, so says Yajñavalkya <sup>5</sup> 'He who thinks that he was not defeated even though he was defeated in due course of law, if such a person is defeated again when coming up again and should be made to pay a double (amount as) fine' In this manner a retrial

<sup>1</sup> Ch VI 6

<sup>2</sup> ब्राह्मणों ने मिल कर अपना समझा हुआ न्याय प्रस्तुत करने के लिये

<sup>3</sup> Intr I 65

<sup>4</sup> Book II 36,

<sup>5</sup> Book II 366

coupled with a fine, the authority being in the king alone in a Court consisting of the king

In a court without the king, however, the rehearing should be done without a penalty, the laying of a penalty having to be done by the king alone the second Court must be higher than the first court

The relative superiority of the members of the Court as deciding authorities has been pointed out in the Chapter<sup>1</sup> on the 'Deciding authorities'. If, however, a doubt is raised that a decision in a king's Court was wrongly decided, the rehearing of it shall be in another Court with a superior king. So also Another Smṛiti. "What has been decided by a king against the principles of law, through ignorance that also being unjustly decided should be submitted again for a decision

As for what has been stated by Pitāmaha. "When a cause has been decided by (the members of a) village, one should go to the town, for a cause decided by a Court however, to the king, when  
 PAGE 130 \* decided by the king even if wrongly decided, there is no re-appeal of it that has a reference where a court of a jurisdiction superior to the first court is not available

Where however a party has been defeated by his own statement there cannot be a rehearing even if a superior Court is available, so says Narada.<sup>2</sup> 'Of those who have lost their cause on account of witnesses or members of the Court and it is attacked (as faulty) there may be a fresh trial for those however, who have been defeated by their own statements the procedure of a new trial has not been stated. The meaning is that those who have been defeated owing to the statements of witnesses or on account of the action of the members of the Court themselves a retrial of the cause may take place when the first decision is attacked. The use of the word 'members of the Court' is inclusive (by implication) also of the ministers and the like. Hence also Manu.<sup>3</sup> "Whether it be a Minister or the Chief Judge whoever decides a cause wrongly, that the king should try himself, and also fine him a thousand

Thus (ends) the (Chapter on) Re-hearing

#### Now the Rescission of transactions—Kṛtanivartanam

There Manu.<sup>4</sup> "A fraudulent mortgage or sale a fraudulent gift or acceptance and (any other transaction) where he detects fraud, all that

1 See p 22 above

2 Intr II 40

3 Ch IX 234

4 Ch VIII 16a

one should rescind' Yoga 'acquisition' : *e.* contact with another's property, by taking it into one's possession as a friendly loan, even though without a desire to acquire it as one's own, *Ādhamanam*, 'mortgaging', *i.e.* creating a charge, by means of possession creating a charge. In this manner should the (compound word) 'fraudulent sale' be dissolved 5  
 Yama also "Whatever had been donated under duress, or held in possession by force, as also caused to be put down in writing, all transactions brought about by force must indeed be upset, so said Manu' *Kātyāyana* also 'By an intoxicated person, or by a lunatic, or under a different intention, whatever had been donated, or transacted, that can never be 10 (regarded as) reliable'. *Nārada* also "Whatever a minor transacts as also one who is not independent, those men who are well versed in *Sāstra* declare that as not done in (the eye of the) law'

The minor, and a person not independent, have also been explained by the Same Author<sup>1</sup> "Like those in the womb<sup>2</sup>, may be regarded a 15 child until the eighth year, a minor, until (he has attained) the sixteenth year, and he is then also called *Poganda*. After that (period) he is (regarded as) capable of understanding the transactions and as independent, if there be no father'

By this it comes to have been stated as of course, that one who has a father (living) is not independent. It has been so stated by *Sankha* and *Likhita* "Not independent are those whose father is living'. The use of the word father is intended to indicate the mother 20 also. Hence also *Nārada* 'While they are living he can never be (regarded as) independent, though he may have reached a mature old age'. 'While they are living' : *i.e.* the mother and the father. "Of the 25 two (parents) even, the father has greater authority, because the seed has been declared to have pre-eminence, in the absence of the owner of the seed, the mother, while in her absence, the eldest born," thus having been stated by the Same Author<sup>3</sup> immediately after 30

By this it comes to be stated that one who has an elder (brother) is also not independent. The Same Author<sup>4</sup> says that it is not that only he is

1 Ch I 39

2 *गर्भादुत्पन्नः* With this may be compared the rule of Roman Law, under which when the child was a mere baby, and could not speak or understand the forms he was *infra its proximus*. After eight he was considered to have *intellectus*, and was *pubertatis proximus*, but not as having attained *judicium* i.e. capacity to decide. See also

2 Ch I 35-36

*Asahya* on this verse

3 Ch I 37

4 Ch I 38

4 Ch I 36



not independent who has a father, or a mother or an elder (but also) "Not independent are women, sons, slaves and the followers" 'The followers' i.e. (those who are) dependent (upon him) for their maintenance

Harita says that in (regard to) particular transactions women have no independence. "In regard to a donation, or in regard to money, and in regard to a religious charity in particular, PAGE 131\* whether for acceptance or alienation never shall a woman have independence" Nārada<sup>1</sup> states others

who are not independent. "All the subjects (people) are not independent, the ruler of the land is independent, not independent has been declared a pupil, while independence exists in the preceptor."

Here, the discussion about independent persons is with a view to point out that a transaction entered into by one not independent is to be upset by him (i.e. the independent person) only, hence also Kātyāyana. "A transaction entered into by one who is not independent, his master should get rescinded, the other party must not quarrel with the<sup>2</sup> master, except in transactions entered into by the affrighted, or the intoxicated" The import is, that as the king alone has jurisdiction in regard to transactions entered into by the affrighted, or the intoxicated, a dispute started by the other party against the master of the affrighted or the intoxicated who has upset it, is not absolutely improper.

Nārada<sup>3</sup> however states an exception, at times, to the upsetting of a transaction entered into by one who is not independent. These transactions themselves are valid if the master ratified, or a son in the absence of the husband or the wife in the absence of the husband or the son. In the same way, a transaction entered into by a slave is declared not to be valid, excepting under the master's sanction, a slave is not master of himself. Also a transaction entered into by a son if it has been without the father's desire, that also is declared invalid. A slave, a son also, these two are equal. The meaning is that the rescission of a transaction entered into by a person who is not independent may be made in a case where there is an absence of the consent of those who are independent.

Kātyāyana also "Never do the gift, mortgage, or sale of fields, houses, or slaves made by those who are not independent attain validity if they are not approved of." If, however, approved, they attain validity, so says the same author. "All these are certainly competent for the sale

1 Ch I 33

3 Ch I 27, 29, 30

2 on page 131, 14 for सर्ग read भर्ग

and purchase of articles of merchandise, if indeed they make these transactions with consent". In the same way, in regard to the sale etc. of land etc., brothers etc. appointed by an independent person, although themselves not independent, may have authority; so says the same Author: "In the same way are a brother, a brother's son, or a son, in regard to transactions about land etc. if they are permitted by a senior (member) going (abroad)". Permitted i. e. appointed. 5

To that effect also *Brhaspati*:<sup>2</sup> "One appointed by his master to look after the income, expenditure, and preservation of his property, and after the loans, village, and trade, is called an appointed manager. Whatever has been transacted by him is valid whether relating to receipts, non receipt, expenses or income, and whether it may have been transacted at home or abroad. The master must not annul such transactions as these". *Kālyāṇa* also says that the master must not rescind a transaction entered into by an appointed agent. "One, however, who has been appointed to a business, in that matter he is indeed the master; his master cannot falsify anything made by him". 15

Similarly, even in the absence of consent or appointment, anything done by one not independent for the purpose of the family maintenance, the one (who is) independent must not falsify, so says *Manu*<sup>3</sup>. "Should even a person wholly dependent make a contract for the behoof of the family, the master of the house, whether in his own country or abroad, must not rescind it" 20

The same rule should be observed (in regard to acts) for removing adversity, so also *Nārada*<sup>4</sup>. "The sages declare that the transactions entered into by women are invalid, except in adversity" The use of the word 'woman' is indicative, by implication, of those who are not independent. Thus, moreover, the implied meaning is to be deduced that in (times of) adversity, even the transactions of those who are not independent are valid 25

In this connection, the Same Author, states by way of pointing out an exception: "Especially the gift, hypothecation or sale of a house or field." The meaning is that the gift, mortgage, or sale of a house or land if made by one not independent are not (regarded as) valid. So has been explained in the commentary on it 30 35

1 मम Dr. Jolly, it appears reads मम

2 Ch VI 7-8

3 Ch VIII 167.

4 Ch I 26,

Likewise, even by one who is independent, but who is like a dependent, a transaction made does not become valid, so says Nārada.<sup>1</sup>  
 'That also which an independent person does, who has lost control over his actions, is declared an invalid transaction on account of his want of independence'

The independents also have been described by the Same Author.<sup>2</sup>  
 'Three persons are independent in this world, a king the Acharya, and among all the *varnas*, a householder in his own house when in this normal condition, (real)<sup>3</sup> independence, however, belongs to the eldest, the (right of) seniority is made up of both capacity and age'

By saying a householder (masculine) *grha* the Author points out that there is no independence for the lady of 'the House (*grham*)'. Therefore, although an absence<sup>4</sup> of independence has been stated to be for one who has a mother, still (from that) no independence for the mother should be inferred. Therefore also the validity of a transaction entered into by a husbandless woman has been stated to be (established) only by the consent of the sons or others.

The meaning of the expression *Prakṛtam gata* 'in his normal condition,' has been expounded by the Same Author.<sup>5</sup> 'Those are declared to have lost control over their actions (*aprakṛtingat*) who are actuated by love or anger, or tormented (by an illness), or oppressed by fear or misfortune or biased by friendship or hatred

A transaction such as the sale of a son or the like is not regarded as valid even though made by an independent person in possession of his normal faculties, as in that respect he has no independence, so says Kātyāyana.  
 "The subjection of the son, or of the son and the wife, is only in regard to the right (of the father or husband) to command but in regard to sale as well as a gift also, there is no (power of) control of the father over the son'. Therefore, the import is that a transaction such as the sale of a son or the like even though made by one who is independent and in possession of his normal faculty, should be rescinded. This has a reference to one who has (only) one son, this (subject) we will discuss in the Title 'Non delivery of what was given'.

Therefore in regard to transactions of sale or the like, although made several times or made by one, or made in regard to one object, as also in

1 Ch I 40

2 Ch I 32

3 Ch I 31 (2)

4 on page 132 l 7 for मादुपुत्रो ह्यनर का read मादुपुत्रोऽनरः et

5 Ch I 41

regard to a re sale also, a re sale, or the like, by reason of the absence of the power to control does not (finally) hold good, so says Yājñavalkya <sup>1</sup>  
 "In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates. In the case of a pledge, a gift, and a sale, however, evidence in support of the prior transaction preponderates" <sup>5</sup>  
 Therefore, the import is that a transaction of a later date and the like should be upset

Thus ends the chapter on Rescission of Transactions

*Now some texts regarding the property of Minors and others — Baladhaṇavishayāni.*

There Manu <sup>2</sup> "The king shall protect the inherited (and other) <sup>10</sup>  
 property of a minor, until he has returned <sup>3</sup> home (from his teacher's house) or until he has passed (the age of) minority" 'Property of a minor' i. e. of the minor's ownership 'inherited property,' i. e., any property. This has a reference to where there is no relative in existence. That the use of the word 'Minor, is intended to indicate (any) <sup>15</sup>  
 one who is not competent to protect his own property, the Same Author <sup>4</sup> proceeds to state clearly. In like manner care should be taken of (the property of) barren women, of a sonless woman of those whose family has become extinct, of wives and widows faithful to their lords, and of women afflicted with disease' 'Barren i. e. sterile 'sonless women, i. e. whose <sup>20</sup>  
 sons are not living, 'whose family has become extinct i. e. who have no one on their side

The Same Author states the penalty for those who deprive barren women and like others of their property. 'While <sup>5</sup> these are living if any of their relatives appropriate their property a righteous king <sup>25</sup>  
 must punish these like thieves'

Of one also who although he is competent to protect his property, still owing to want of knowledge of its location or similar cause, his property has been discovered by another and reported to the king, the same <sup>30</sup>  
 should be announced to the people's assembly and kept <sup>6</sup>  
 P. r 133\* under the protection of the king, says Gaṇḍama <sup>7</sup>  
 'After having found I lost property whose owner is not

<sup>1</sup> Book II 27

<sup>2</sup> Ch VIII 27

<sup>3</sup> गृह्य is the ceremony performed when the celibate student returns home after completion of his course of aśrama of the Acharya

<sup>4</sup> Ch VIII 28

<sup>5</sup> Ch VIII 29

<sup>6</sup> Dh II Ch X 30, 37,

(known), they (the finders) should announce it to the king (36). The king shall cause it to be proclaimed, and it shall be guarded (by him) for a year "

As to what has been said by Manu <sup>1</sup> "Property, the owner of which has disappeared, the king shall cause to be kept as a deposit for three years," that has a reference to an owner who is probably in a far distant country.

The deposit, moreover, should be made by the king without an intention of mixing it with his own property. To that effect (says) also the Same Author <sup>2</sup> "Lost property found, when its owner is not known, shall remain with specially appointed officers, if any one takes it the king shall cause these to be slain by an elephant as thieves." Property which has been lost to the owner, and which has been found by another is (called) 'lost property.' 'By an elephant i.e. by a trunked elephant

Yājñavalkya <sup>3</sup> states the rule about property lost to the owner and found (by another) 'Lost property when (subsequently) recovered should be given by the king to the owner.' The owner also should establish his ownership and (then) take it. So says Manu <sup>4</sup> "He who says, 'This belongs to me, must be examined according to the rules, if he accurately describes the shape, and the number etc., he (proves himself) as the owner, (and) is entitled to (receive) that property." The meaning is that the person who says 'it is mine,' such a one when questioned by the king's officers as to at what place, at what time of what colour, how deposited, of what number, of what measure was it lost, gives replies as to the same kind of deposit, and the like other details he may take away that property. On a discrepancy, however, he will not be proved to be the owner and will not be entitled, this is the import.

On the other hand, for his attempting to wrongfully obtain the possession of another's property, he shall be liable to a punishment, so says the Same Author <sup>5</sup> "But if he does not really know the time and the place where it was lost, its colour, shape and size, he deserves to be punished with a fine equal (in value) to it." Not knowing the facts, and (therefore making inconsistent statements, equal to it, i.e. equal to the lost property).

1 Ch VIII 30

2 Ch VIII 32

3 Book II 73

4 Ch VIII 31

5 Ch VIII 32

6 Here there is a mistake in the print: for नान्यी वदन्ना read नान्यीवेदन्ना

Even one who gives consistent replies everyone must take the lost property and recovered before (the expiry of) one year only. So says Yajñavalkya <sup>1</sup>. A thing which was lost or stolen, and which was recovered by the custom officers or by the local watchman, the owner may take away within one year, (and) after it the king. In regard to an owner, however, who is at a far distant place Manu <sup>2</sup> says 'Within the period of three years the owner may take it away, after that the king may take'.

Indeed, this statement that 'the king may take' is contradictory to the rule prohibiting the appropriation of another's property. (The answer is) yes, and therefore it is, that the meaning of this should be understood to be that from a separate place, where it was deposited the king should take it to his own place. Therefore, moreover, even if the owner turns up after the time limit has expired, lost property recovered should certainly be given to the owner, if it has been duly established (to be his) by regard to its form number etc.

But on the other hand, the king should recover some money from him for the fault of transgressing the limit. To that effect also the Same Author <sup>3</sup>. Now the king may take one sixth part from the property lost and recovered or a tenth or a twelfth bearing in mind the rule of good men. By the word 'now' *atha* is expressed the interval of time of the appearance of the owner after the lapse of the prescribed limit. The rule of adjustment to be understood should be that if the delay be far too much a sixth part but if not far too much, the tenth part, and in the absence of any delay, a twelfth part should be taken.

As to what has been stated by Gautama <sup>4</sup>. 'Afterwards to the finder, one-fourth to the king the remainder, that rule should be observed in the case of an owner who has transgressed the limit, and when it has been determined that he has perished. If however the owner is living then it is clear from this very text that the fourth part of the king's portion goes to the finder.

As to what has been stated by Yajñavalkya <sup>5</sup>. In the case of a beast with a single hoof, (the owner) should pay four parts five for a goat and two each for a buffalo a camel, or a cow and a fourth each for a sheep or a deer that has been stated by some commentators as a fifth or a sixth.

<sup>1</sup> Book II, 173

<sup>4</sup> Ch IX 38

<sup>2</sup> Ch VIII 30

<sup>3</sup> Ch II 1

<sup>5</sup> Ch II 1

regard to animals with a single hoof and the like, and in modification of the rule stated by Manu regarding the recovering of a sixth share or the like. By others however, it has been stated to be by way of laying down a rule of payment to the finder in the case of single hoofed animals and the like.

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In regard to a treasure trove lost and recovered, Manu <sup>1</sup> states a special rule. "From that man who shall truly say with respect to a treasure trove, 'this belongs to me,' the king may take one sixth, or a one twelfth part, but if he falsely says so, he shall be fined in one eighth of the property." The meaning is (when he says) it is mine since it had been deposited by me or my ancestors, this he should establish by facts as true such as by means of the evidence consistent with its form, number etc.

Here, the rule of adjustment should be understood to be that when the owner is devoid of any qualifications he should take a one-sixth, but when he is duly qualified, one twelfth, likewise when however, the owner of the treasure is a learned Brāhmana, nothing whatever should be given to the king, so says the Same Author <sup>2</sup>. "When, however, a learned Brāhmana finds a treasure deposited before, he may even take it in entirety, for, indeed, he is the master of the whole." 'Deposited before,' i.e. deposited by his father or the like.

The use of the word 'learned' is indicative of the six <sup>3</sup> (kinds of) privileges also. Hence also Vasishtha <sup>4</sup>. "If a Brāhmana finds it, (then if he be observing the six fold duties, he may take the whole." 'Six-fold duties' i.e. offering a sacrifice etc.

As to what, moreover, has been stated by Manu <sup>5</sup>. The king obtains one half of ancient hoards and metals (found) in the ground, by reason of (his giving) protection, (and) indeed (because) he is the lord of the soil", that has a reference to the treasure found by a Brāhmana of the aforesaid qualifications, where no memory of the owner is available since the word 'ancient' has been used.

1 Ch VIII 35 36

2 Ch VIII 37

3 The षट्कर्माः are अश्वपदन, अश्वपान, वज्रन, वाजन, दान and प्रतिद्व

4 Dh 8 Ch III 13

5 Ch VIII 39

As for what has been stated by *Yasubha* <sup>1</sup> "When one happens to find a treasure, (the owner of which is) not known, the King should take that after giving a sixth part to the finder", that has a reference to a finder devoid of the aforesaid qualifications Hence also *Yajñavalkya* <sup>2</sup>

'If a treasure-trove is found by any other, the King should take a sixth part if however, the information is not given (by the finder), and he is found out, the finder should be made to pay a fine' The meaning of the first half is that the King should take a one-sixth part from a finder of a treasure who is other than a Brahmana duly qualified by learning and by the performance of the six-fold duties, the meaning of the latter <sup>3</sup> half is that from the man who attempted to cheat in regard to the found treasure the entire treasure should be taken, and a fine also according to his capacity

*Manu* <sup>4</sup> states a rule when the King himself is the finder 'When the King finds a treasure of gold concealed in the ground let him give one half to Brahmanas, and place the other half in his treasury' If, however, the treasure be his own 'he should place it in its entirety in his treasury since *Gautama* <sup>5</sup> has stated 'A treasure-trove is the King's property

As regards property taken away by robbers, (a rule) has been stated by the Same Author <sup>6</sup> himself Having recovered property stolen by the thieves he shall return it to the owner, or he should pay (its value) out of his treasury When he is unable to comply with the first alternative, (then) is the second alternative As says *Vyasa* 'When, however, a King is unable to restore property taken away by robbers, that indeed should be paid from his own treasury by a King who is unable (to restore)

Thus the texts relating to the property of minors and the like

After having reached the beautiful crescent light of Deva sprung from Kesava the Sun the peaceful leader of the twice born may the people (be able to) to do all the proceedings at law in peace

Thus is concluded the First Part in the *Vyavahāra Kāṇḍa* of the *Smṛtebandhika* composed by *Yājñika Devanabhatta* the *Śomayājī*, the son of *Keśavaditya Bhattopadhyaya*, the accomplished scholar in all lore

1 Dh S Ch III 13

2 Book II 35

3 The *Mitāksharā* has interpreted it differently See p 758 II 13-18

4 Ch VIII 35

5 Dh S Ch. X 41

6 Dh S Ch. X. 46-47.



In this part the following is the list of contents in successive order :

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- 5 Trials (7) Law of Arrest (8) Commencement of the proceedings at Law (9) The Plaint, the Answer, and the subject under dispute (10) The Part relating to the burden of proof, evidence, documents (11) Test of documents (12) Discussion of the law of possession (13) Characteristics of witnesses (14) Kinds of witnesses (15) Persons incompetent
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25 Thus in the *Smṛtichandrikā* in the *Vyavahārikāṇḍa* in its First Part, the list of Contents in order, is finished.

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